United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1907.

No. 1837. 521

CHARLES A. LANGLEY, JAMES LOCKHEAD, WILLIAM H. McCUEN, AND GEORGE R. HERBERT, COPARTNERS, TRADING AS WILLIAM H. McCUEN AND COMPANY; WILLIAM H. McCUEN, AND JAMES LINSKEY AND EDWARD T. LINSKEY, COPARTNERS, TRADING AS JAMES LINSKEY AND SON, APPELLANTS,

vs.

CECELIA C. D'AUDIGNE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED OCTOBER 14, 1907.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1907.

No. 1837.

CHARLES A. LANGLEY, JAMES LOCKHEAD, WILLIAM H. McCUEN, AND GEORGE R. HERBERT, COPARTNERS, TRADING AS WILLIAM H. McCUEN AND COMPANY; WILLIAM H. McCUEN, AND JAMES LINSKEY AND EDWARD T. LINSKEY, COPARTNERS, TRADING AS JAMES LINSKEY AND SON, APPELLANTS,

vs.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 25, 1907.

In the Court of Appeals of the District of Columbia.

No. 1837.

CHARLES A. LANGLEY ET AL., Appellants,
vs.
CECELIA C. D'AUDIGNE.

a Supreme Court of the District of Columbia.

CHARLES A. LANGLEY, Complainant,
vs.
CECELIA C. D'ANDIGNA, Formerly Cecelia C. May; JAMES LOCKHEAD, CATHERINE M. McLEOD, WILLIAM H. McCUEN, and GEORGE R. HERBERT, Copartners, Trading as William H. McCuen and Company; WILLIAM H. McCUEN, JAMES LINSKEY, and EDWARD T. LINSKEY, Copartners, Trading as James Linskey & Son; ELMER H. CATLIN, Trading as Elmer H. Catlin & Co.; CHARLES A. MUDDIMAN and FREDERICK W. BUDDICKS, Copartners, Trading as C. A. Muddiman & Co., and FREDERICK W. DAW and SAMUEL M. DIXON, Copartners, Trading as Daw & Dixon, Defendants, } Equity. No. 22963.

and

JAMES LOCKHEAD, Complainant,
vs.
CECELIA *G.* D'ANDIGNA, Formerly Cecelia *G.* May, and J. BARTON KEY, Defendants. } No. 23055.

and

b JAMES LINSKEY and EDWARD T. LINSKEY, Copartners, Trading as James Linskey and Son; WILLIAM H. McCUEN (Individually) and WILLIAM H. McCUEN and GEORGE R. HERBERT, Copartners, Trading as McCuen and Company, Complainants,
vs.
CECILIA C. D'AUDIGNA (*Formally* Cecilia C. May), J. BARTON KEY, CHARLES A. LANGLEY, JAMES LOCKHEAD, CATHERINE M. McLEOD, ELMER H. CATLIN, Trading as Elmer H. Catlin and Company; CHARLES A. MUDDIMAN and FREDERICK W. BUDDICKS, Copartners, Trading as C. A. Muddiman and Co., and FREDERICK W. DAW and SAMUEL H. DIXON, Copartners, Trading as Daw and Dixon, Defendants. } Equity. No. 23143.

Consolidated.

Consolidated.

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled causes, to wit:

1 *Bill of Complaint.*

Filed December 27, 1901.

In the Supreme Court of the District of Columbia.

CHARLES A. LANGLEY, Complainant,
vs.
CECILIA C. D'ANDIGNA, Formerly Cecilia C. May; JAMES LOCKHEAD, CATHERINE McLEOD, WILLIAM H. McCUEN, and GEORGE R. HERBERT, Copartners, Trading as William H. McCuen and Company; WILLIAM H. McCUEN, JAMES LINSKEY, and EDWARD T. LINSKEY, Copartners, Trading as James Linskey & Son; ELMER H. CATLIN, Trading as Elmer H. Catlin & Co.; CHARLES A. MUDDIMAN and FREDERICK W. BUDDICKS, Copartners, Trading as C. A. Muddiman & Co., and FREDERICK W. DAW and SAMUEL M. DIXON, Copartners, Trading as Daw & Dixon, Defendants.

Equity. No. 22963. Doc. 51.

To the Honorable the Justice of the Supreme Court of the District of Columbia, holding a Special Term in Equity:

Your Complainant, Charles A. Langley, respectfully represents:

1. That he is a citizen of the United States, a resident of the District of Columbia, and brings this suit in his own right, as hereinafter set forth.

That the defendant, Cecilia C. d'Andigna, formerly Cecilia
2 C. May, is a citizen of the United States, at present residing in the City of Paris, France, and is sued in her own right in respect of matters relating to her sole and separate estate, as hereinafter set forth.

That all of the other defendants above named, as complainant is informed and believes, and, therefore, so avers, are citizens of the United States, and residents, respectively, of the District of Columbia, and they are each and all, claimants under what is known as the "Mechanics' Lien Law," relating to the District of Columbia; and that each of said defendants has filed in the office of the Clerk of the Supreme Court of the District of Columbia, under and in accordance with the statute in such case made and provided, a notice of lien, claiming, respectively, liens upon and against the lands and premises hereinafter described, as follows:

No. 4842, filed February 6, 1901, at 4.02 o'clock P. M., by James Lockhead, for..... $1,417.86
with interest from January 15, 1901.
No. 4844, filed February 7, 1901, at 10.25 o'clock A. M., by Catherine M. McLeod, for..... 836.00
with interest from February 6, 1901.
No. 4850, filed February 15, 1901, at 3.15 o'clock P. M. by William McCuen and George R. Herbert, co-partners, trading as William H. McCuen and
3 Company for 1,877.23
with interest from November 21, 1900.
No. 4851, filed February 15, 1901, at 3.15 o'clock P. M., by William H. McCuen, for 272.55
with interest from January 31, 1901.
No. 4852, filed February 15, 1901, at 2.15 o'clock P. M., by James Linskey and Edward T. Linskey, copartners, trading as James Linskey & Son, for..... 881.25
with interest from December 17, 1900.
No. 4866, filed February 28, 1901, at 1.30 o'clock P. M. by Elmer H. Catlin, trading as Elmer H. Catlin & Co., for 118.05
with interest from February 1, 1901.
No. 4868, filed February 28, 1901, at 1.30 o'clock P. M., by Charles A. Muddiman and Frederick W. Buddicks, copartners, trading as C. A. Muddiman & Co., for.. 297.62
with interest from February 15, 1901.
No. 4877, filed March 23, 1901, at 11.10 o'clock A. M. by Frederick W. Daw and Samuel M. Dixon, copartners, trading as Daw & Dixon, for..... 758.75
with interest from February 1, 1901.

4 Total amount of liens claimed by said defendants, exclusive of that claimed by complainant.... $6,459.31

That the said liens, notices of which have been so filed by said defendants, as aforesaid, do not appear of record to have been satisfied at the time of the filing of this bill of complaint; and said lienors are, therefore, made parties defendant to this suit.

2. That the defendant, Cecilia C. d'Andigna, formerly Cecilia C. May, now is, and at all times hereinafter specified was, seized and possessed, in fee simple, in her own right, and as her sole and separate estate, of the following lands and premises, situate, lying and being in the City of Washington, District of Columbia, and known and described as and being:

All of Lots numbered Nine (9), Ten (10) and Eleven (11), in the sub-division of lots in Square numbered Two hundred and twenty-two (222), made by the heirs of John Davidson, as per plat recorded in Liber N. K., at folios 63 and 64, of the records of the Surveyor's Office of the District of Columbia; together with the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in any wise appertaining.

3. That on and prior to November first, A. D., 1900, said pieces and parcels of land were improved by certain brick buildings which had been theretofore rented and leased by said defendant, d'Andigna, as such owner aforesaid, for the conduct therein of an hotel business; but that at or about the date last aforesaid, said premises had become and were vacant and in a bad condition and in need of repair, and were generally in an unsuitable and unfit condition for the conduct therein of the business of an hotel, as aforesaid; and that by reason thereof it became necessary for said defendant, in order to profitably use or lease the said premises, to substantially remodel, refit, renovate and repair the same.

4. That thereupon, to-wit, on or about the date last aforesaid, said defendant, d'Andigna, made, entered into, and executed, with one J. Barton Key, hereinafter referred to, a certain agreement and indenture of lease for the lands and premises aforesaid, for the term of five (5) years, ending November 1st, A. D. 1905, at certain stipulated and agreed rentals.

That, in consideration for the leasing by the said Key of the said lands and premises, in the then bad condition and want of repair thereof, as above set forth; and in consideration for the payments of rental therein stipulated and reserved; the said agreement and indenture of lease provided, *inter alia*, that the said Key might and should make improvements, alterations and repairs to and upon the premises aforesaid, to the extent of Five thousand dollars, ($5000.) the same to be paid for to the extent aforesaid, by the said lessor, the said Cecilia d'Andigna, party defendant herein; but that, all such improvements, alterations and repairs in excess of said sum of Five thousand dollars ($5,000.) should be paid for by the said lessee, the said J. Barton Key.

5. That thereafter, to-wit, on or about the fifteenth day of November, A. D. 1900, the said defendant, d'Andigna, through and by the said J. Barton Key, acting therein for her and as her agent in that behalf thereunto duly authorized, made and entered into a certain contract and agreement with complainant for the improvement, alteration and repair of the said premises, the same then being in a bad condition and standing and being in need of repairs, as aforesaid; it being agreed that for the furnishing of the necessary labor and materials for the doing of said work, and the making of said improvements, alterations and repairs, as well the personal supervision thereof by complainant, there should be paid him the net cost of said necessary work, labor and materials, together with an additional sum equal to ten per cent. of the net cost of said work, labor and materials.

6. That, in pursuance and performance of said contract, the complainant, to-wit, on or about the nineteenth day of November, A. D. 1900, commenced the work so required of him, as aforesaid, and continued the same from day to day thereafter, until, to-wit, on or about the nineteenth day of January, A. D. 1901, when the same was finished and completed.

That complainant fully and in all respects complied with and performed his said contract according to its terms; and, upon the

completion thereof, the same was duly accepted by the defendant, d'Andigna, by her agent in that behalf, as aforesaid; and the
7 same has ever since been retained and used by her; by reason of which said improvement, alteration and repair of the premises aforesaid, the same have become and are greatly enhanced in value; and said defendant d'Andigna, in consequence thereof, has received and is still receiving large incomes, gains and profits from the rental of said lands and premises.

7. That the net cost of the necessary work, labor and materials, so done, performed and furnished by complainant, as aforesaid, amount to the sum of Three thousand four hundred and twenty-eight dollars and thirty-eight cents, ($3,428.38); the same being made up of the several items and charges set forth in the particulars thereof, hereto attached, made part hereof, and marked Exhibit "A."

That each and every of said items and charges is and are the fair and reasonable value of the work, labor and materials embraced therein.

That, as above stated, in addition to the amount last-aforesaid, complainant was to receive, under his said contract and agreement in that behalf, a sum equal to ten per centum thereof, to-wit, the sum of Three hundred and forty-two dollars and eighty-four cents ($342.84), thus making the total amount due complainant from said defendant, d'Andigna, under the contract aforesaid, the full sum of Three thousand seven hundred and seventy-one dollars and twenty-two cents ($3,771.22).

8. That thereafter, and on, to-wit, the fifth day of February, A. D. 1901, at 2.40 o'clock P. M., complainant, not having been
8 paid any part of the amount so due him, as aforesaid, filed with the Clerk of the Supreme Court of the District of Columbia, the notice of lien provided for under and in pursuance of the statute in such case made and provided, the same being numbered 4841, and being so filed by complainant prior in point of time to the several notices of lien thereafter filed against the same lands and premises by the several parties defendant herein above referred to; a true and correct copy of which said notice of lien so filed by complainant is hereto attached, made part hereof, and marked Exhibit "B."

9. Complainant further shows, that the said defendant, d'Andigna, although often thereunto requested, has hitherto wholly failed and neglected and still does fail and neglect to pay to complainant the amount so due him, as aforesaid, or any part thereof, and the whole thereof remains and is justly due and owing from the said defendant to complainant.

10. Complainant further avers that, by reason of the premises aforesaid, he has acquired a lien upon the lands and premises aforesaid of the said defendant, d'Andigna, to the extent of the amount so due him, as aforesaid, to-wit, the said sum of Three thousand seven hundred and seventy-one dollars and Twenty-two cents, ($3,771.22), together with lawful interest on said amount from January 26th, A. D. 1901, until paid.

Wherefore, the premises considered, and to the end that
9 said lien of complainant may be established and enforced by decree of this court, in conformity with law, complainant prays:

1. That the process of this court may issue directed to the defendants, Cecilia C. d'Andigna, formerly Cecilia C. May; James Lockhead; Catherine M. McLeod; William H. McCuen and George R. Herbert, copartners, trading as William H. McCuen and Company; William H. McCuen; James Linskey and Edward T. Linskey, copartners, trading as James Linskey and Son; Elmer H. Catlin, trading as Elmer H. Catlin & Co.; Charles A. Muddiman and Frederick W. Buddicks, copartners, trading as C. A. Muddiman & Co.; and Frederick W. Daw and Samuel M. Dixon, copartners, trading as Daw and Dixon; requiring them, and each of them, to appear and answer the exigencies of the foregoing bill of complaint; but not under oath, answer under oath being hereby expressly waived.

2. That, in the event said defendants, or any or either thereof, be not found within the jurisdiction of this court, and shall thereafter fail to enter voluntary appearance herein, an order of publication may be passed herein, in conformity with the statute in such case made and provided.

3. That the Court shall ascertain and adjudge to complainant the amount properly due him for the work and labor done and furnished, and materials provided under his said contract, as hereinbefore set forth.

4. That the court will establish and decree, in favor of
10 complainant, a lien upon and against the lands and premises aforesaid, to the amount of the indebtedness aforesaid, to-wit, said sum of $3,771.22, together with lawful interest thereon from the twenty-sixth day of January, A. D. 1901, until paid, together with the costs of this suit for the establishment and enforcement of said lien; and that, in the event the amount so decreed to be paid him, as aforesaid, be not paid by said defendant, d'Andigna, at a short day to be fixed by the court, the said lands and premises, together with all the right, title and interest therein and thereto of the said defendant, d'Andigna, may be decreed to be sold, under the direction of this court, and that the proceeds of such sale may be applied to the satisfaction of such lien as the court shall adjudge and decree in favor of complainant upon and against said lands and premises.

5. That complainant may have all such other and further relief as the nature of his case may require.

CHARLES A. LANGLEY,
Complainant.

A. A. HOEHLING, JR.,
Solicitor for Complainant.

The defendants to this Bill of Complaint are:
Cecilia C. d'Andigna, formerly Cecilia C. May;
James Lockhead;
Catherine M. McLeod;

William H. McCuen and
George R. Herbert, copartners, trading as William H. McCuen and Company;
William H. McCuen;
James Linskey and
Edward T. Linskey, copartners, trading as James Linskey and Son;
Elmer H. Catlin; trading as Elmer H. Catlin & Co.;
Charles A. Muddiman and
11 Frederick W. Buddicks, copartners, trading as C. A. Muddiman & Co., and
Frederick W. Daw and
Samuel M. Dixon, copartners, trading as Daw and Dixon.

DISTRICT OF COLUMBIA, *ss:*

Before me, the undersigned, personally appeared Charles A. Langley, who, being by me first duly sworn, on oath, says:

That he has read the foregoing Bill of Complaint, by him subscribed and knows the contents thereof; that the matters and things therein stated of his own knowledge are true; and those stated upon information and belief, he believes to be true.

CHARLES A. LANGLEY.

Subscribed and sworn to before me, this 27th day of December, A. D. 1901.

[SEAL.]

S. M. CRAIGER,
Notary Public, D. C.

12 EXHIBIT "A."

Particulars of Account.

Excavating and Concrete footings	$31.75
Brick-work	425.40
Stone-work	231.00
Iron beams	22.50
Galvanized iron work	67.50
Tinning	21.03
Iron work	183.84
Lumber	71.37
Plastering	369.12
Mill work	369.68
Stairs	258.50
Glass and glazing	68.40
Tiling and shelves	50.30
Hardware	47.33
Cement sidewalk	21.00
Mill work	119.65
Glass and glazing	58.50
Painting work	125.57

Iron railing	3.25	
Brass railing	48.50	
Signs	90.00	
Carpenter's work	743.19	
Building permit	1.00	
		$3,428.38
Percentage, 10 per cent. net cost		342.84
Total amount due		$3,771.22

With lawful interest on said amount from January 26, A. D. 1901.

13 EXHIBIT "B."

Filed and Recorded Feb'y 5, 1901, at 2.40 o'clock p. m.

Supreme Court, District of Columbia.

No. 4841.

CHARLES A. LANGLEY, Claimant,
vs.
CECILIA C. D'ANDIGNA, Formerly Cecilia C. May, Owner.

Notice of Lien.

Notice is hereby given that I intend to hold a mechanics' lien upon Lots numbered Nine (9), Ten (10), and Eleven (11), in the sub-division of lots in Square number Two hundred and twenty-two (222), made by the heirs of John Davidson, as per plat recorded in Liber N. K., folios 63 and 64, of the Surveyor's Office of the District of Columbia; situate in the City of Washington, in the District of Columbia, and the building thereon, for the sum of Three thousand, seven hundred and seventy-one 22/100 Dollars ($3,771.22), with interest from January 26th, 1901, being amount due to me for labor upon and materials furnished for the re-modelling, re-construction and (repair) of said building under and by virtue of a contract with J. Barton Key.

CHARLES A. LANGLEY, *Claimant,*
By A. A. HOEHLING, JR., *His Attorney.*

14 *Answer.*

Filed April 14, 1902.

In the Supreme Court of the District of Columbia.

Equity. No. 22963.

CHARLES A. LANGLEY
vs.
CECILIA C. D'ANDIGNE ET AL.

This defendant, by protestation, not admitting or confessing any of the matters and things in the Bill of Complaint alleged, by reason

of the many errors and imperfections therein contained, but expressly reserving all exceptions thereto in the same manner as if she had demurred thereto, for answer to so much and such parts of said Bill as she is advised is necessary for her to make answer unto, answering, says:

I. She has no knowledge as to the allegations contained in paragraph one of said Bill, except such as relate to herself, and in so far as the same may be material, calls for strict proof thereof.

She admits that she is a citizen of the United States, and a resident of the City of Paris, France, and has resided in said City since for about six years.

She avers that she received no notice whatever of the filing of liens against the property described in the Bill of Complaint until the several suits pending in this Court, were filed to enforce the same.

15 II. She admits the allegations of paragraph two of said Bill, but says that her title to said property is subject to certain encumbrances in the nature of deeds of trust, which were of record long prior to the date of the transactions set forth in the Bill of Complaint.

III. For answer to paragraph three of said Bill, this defendant admits that said premises had been for several years prior to November 1st, 1900, used for the conduct of an hotel business therein; but she denies that said premises had become on the date aforesaid in bad condition and in need of repair and generally in an unsuitable and unfit condition for the conduct therein of the business of an hotel, or that it became necessary for this defendant in order to lease the same, to substantially remodel, refit, renovate and repair the same. On the contrary, this defendant avers the fact to be that on the date aforesaid, said premises were in first class condition, ordinary wear and tear excepted, and in every way suitable for the conduct therein of a first class hotel business.

She further avers that she had no trouble in leasing said premises in the condition they were then in, to J. Barton Key, who desired to use same in the conduct of a first class hotel business. She denies that on the date aforesaid, or at any date subsequent thereto, did she remodel, refit, renovate or repair said premises, or even agree to do so in any degree whatever.

She further denies that in the leasing of said premises to J. Barton Key, the condition of said premises as to repair, bore any part or consideration in the agreement between her and said Key

16 as to the amount of rent to be paid by said Key for the use of said premises.

IV. This defendant admits that on the fifth day of November, A. D., 1900, by Henry May, her attorney-in-fact she entered into a lease with said J. Barton Key for the rental by him of said premises for the term of five years commencing on the first day of November, 1900 and terminating on the first day of November, 1905, said lease reserving therein the rental or sum of Thirty-seven Thousand Five Hundred Dollars ($37,500.00) to be paid by said lessee for the term of said lease, payable in monthly installments of Six

Hundred and Twenty-five Dollars ($625.00), in advance, on the first day of each and every month during the continuance of said lease. All of which will more fully and at large appear by reference to said lease, a copy of which is filed herewith, marked Defendant's Exhibit No. 1, which said lease, or the copy thereof is prayed to be read and considered as part hereof.

This defendant further avers that said lease was not recorded among the Land Records of the District of Columbia, or anywhere else but after the execution thereof, remained in the private possession of the attorney-in-fact of this defendant, or her agent, J. V. N. Huyck; and she is advised and believes that neither did the said Attorney-in-fact, nor said agent, nor said Key, at any time communicate the terms thereof to the complainant or any of the other defendants to this cause; and this defendant is informed and believes, and therefore avers, and charges, that whatever work was done, or materials furnished by said Complainant, or the other de-
17 fendants herein, under contract with said Key, was done and furnished, upon the personal responsibility of said Key, and in entire ignorance by them of the terms and provisions of said lease.

Further answering said paragraph four, of said Bill, this defendant denies that "the bad condition and want of repair" of said premises entered into the matter of said lease or the negotiation therefor. She is informed and believes and therefore avers the fact to be, that there was no agreement between this defendant or her attorney-in-fact, and said J. Barton Key that the lessor should be in any way responsible or liable to the extent of Five Thousand Dollars ($5,000.00), or any other sum whatever for the improvements, alterations or repairs, which might be made upon said premises by said lessee, but on the contrary, that no such matter was brought up for consideration in connection with the negotiation for said lease and at no time either prior to the signing of said lease or subsequent thereto, was it ever contemplated or agreed between the parties to said lease that this defendant should be in any way bound or liable for the acts of said lessee in the matter of repairs or improvements to be made on said premises.

This defendant avers that the clause in said lease which is referred to in the fourth paragraph of said Bill, does not bear out or justify the allegations contained in said paragraph, but relates to such extraordinary alterations and repairs, which the lessee was at liberty to make, or not, as he might elect, but which, if made with the written consent of the lessor first had and obtained and
18 approved by the lessor, and should equal in value the sum of Five Thousand Dollars ($5,000.00), would entitle the lessee to a deduction from the amount of the rent for said term of Five Thousand Dollars, it being understood, however, if such deduction was made that it should be credited on the amount of the rental from said term at the rate of One Thousand Dollars ($1,000.00) per year and that any extraordinary repairs or alterations in excess of Five Thousand Dollars ($5,000.00) should be paid

for by the lessee, that the clause of said lease referred to reads as follows:

"That no change shall be made in the construction of said building, or in alterations of partitions or stairways without the written consent of the lessor first had and obtained, but the said lessee may with the written consent of said lessor, make improvements, alterations and extraordinary repairs and if such improvements, alterations and repairs during the period of this lease equal the sum of Five thousand dollars and are approved by the lessor, the said sum of five thousand dollars will be deducted from the amount of rent paid for said term; it being understood, however, and by this agreement provided, that only one thousand dollars shall be deducted during any one year of said tenancy. All such improvements, repairs and alterations in excess of said five thousand dollars made during the term of said lease shall be made and paid by the said lessee."

That said provision was based upon the fulfillment by said
19 lessee of his agreement in its entirety, the desire to have a permanent tenant being a moving consideration for the credit to be allowed said lessee referred to in said paragraph of the lease. This defendant avers, however, that said Key not only did not keep and perform the conditions of said lease, or his part to be kept and performed, but that he did not obtain her consent in writing or otherwise, to make any extraordinary repairs or improvements on said premises and he paid rent for said premises only up to and including December, 1900. That on February 5th, 1901, said premises were taken possession of by Receivers appointed by this Court in the case of James P. Scott *vs.* J. Barton Key, Equity No. 22,044; that said Receivers closed said hotel on March 20, 1901, under order of this Court, and on April 22, 1901, reported to the Court sale of all the goods, chattels and personal property of said Key located upon said premises. Said sale was ratified by the Court on May 14, 1901; and said Receivers ordered to turn over said premises to this defendant on June 3, 1901. That by reason of the failure of said Key, this defendant not only lost a permanent tenant, and the rent of said premises for more than seven (7) months, but she was called upon to expend large sums of money in the employment of counsel to protect her interests in the several contests before the Courts between the said Key and his creditors.

V. Answering paragraph five of said Bill, this defendant says she has no knowledge of the execution of the contract between Complainant and said J. Barton Key, or any of the provisions thereof, and in so far as the same may be material calls for strict
20 proof thereof. She denies all the other allegations in said paragraph contained.

Further answering said paragraph this defendant denies that said J. Barton Key was ever authorized to, or, as a matter of fact, did, enter into a contract of any character with the Complainant; or any of the defendants as her agent, or on her behalf, and she denies that any such contract was, in fact, ever executed. She avers that neither

by the terms of said lease, nor by authority of the negotiations with her attorney-in-fact for said lease, was there ever any understanding or agreement between the parties thereto that said Key should in anywise be the agent of this defendant, but on the contrary, it was distinctly understood and agreed between said parties that the only relation which should arise between the parties was that of lessor and lessee.

VI. Answering paragraph six of said Bill, this defendant says she has no knowledge as to work performed on said premises by Complainant, or the value thereof, and calls for strict proof of said allegation. She avers that after the execution of the lease aforesaid, the said Key was put into possession of said premises, and he remained in the exclusive possession thereof, until the Receivers appointed by this Court in said Equity Cause No. 22,044 took possession of said premises, and this defendant never had any knowledge, either directly or indirectly, as to the character or extent of the repairs being made by said lessee. She admits that said lessee made application to her agent for leave to make certain extraordinary repairs and improvements, which application was denied. She denies that the work done on said premises by the Complainant,
21 was ever accepted by her, or by her agent for, or on her behalf; and she denies that said Key was ever authorized to make said repairs as her agent, or to accept the work when completed, as her agent, or on her behalf, or that he did, as a matter of fact, anything in the premises, as her agent. On the contrary she avers that Complainant contracted with said Key solely upon his individual responsibility, and the whole course of the business was conducted with said Key in his individual capacity and not as representing this defendant or any one else.

Further answering said paragraph six (6) this defendant denies that she has been in possession of said premises since the 19th day of January, 1901, and receiving large gains, incomes and profits therefrom. On the contrary she avers that the record in said Equity Cause No. 22,044 shows that the Receivers appointed by this Honorable Court took possession of said premises under order of Court passed February 5, 1901, and said premises were turned over to this defendant by order passed June 3rd, 1901. The record further shows that this defendant has received no rent or income whatever from said property since the 1st day of January, 1901, and that in the distribution of the fund in the hands of said Receivers, she is credited on account of said rent with the sum of Nine Hundred and Thirty-five Dollars and ninety-one cents ($935.91), which sum she has not yet received. She denies that said premises have been greatly enhanced in value, or that she has received and is still receiving large incomes, gains and profits by reason of the improvements made upon said premises by Complainant, or the other defendants hereto.

VII and VIII. This defendant can neither admit or deny
22 the allegations in paragraph- seven (7) and eight (8), of said Bill as to the amount due Complainant from J. Barton Key and the filing of mechanics' liens, but in so far as same may be material, calls for strict proof thereof. She denies that there ever

was, or is now, any amount whatever due from her to Complainant, or that there ever was any contract of any kind existing between Complainant and herself.

IX and X. This defendant denies the allegations of paragraph-nine and ten of said Bill. She denies that there is any amount due from her to Complainant, and she denies that Complainant has any right, legal or equitable, to subject her property to a lien for any amount whatever, by reason of any contract whatever — relations existing between her and said J. Barton Key, or otherwise.

And having fully answered, this defendant prays to be hence dismissed with her reasonable costs.

CECILLA C. D'AUDIGNE,
By HAMILTON & COLBERT,
Her Sol'rs.

Oath and personal signature waived.
A. A. HOEHLING, JR.,
Sol. for Complainant.

4/14/02.

23 EXHIBIT No. 1.

This indenture, Made this 5th day of November, A. D., 1900, between Henry May, of the City of Washington, District of Columbia, Attorney-in-fact for Cecilia C. d'Andigne, of Paris, France, duly appointed by Power of Attorney, dated December 19, 1894, hereinafter called the lessor, which expression shall include her heirs, assigns and attorney where the context so requires or admits, party of the first part, and J. Barton Key, now residing in the City of Washington, District of Columbia, hereinafter called the lessee, which expression shall include his heirs and assigns where the context so requires or admits, party of the second part,

Witnesseth, that for and in consideration of the rent hereinafter stipulated and agreed to be paid, and the covenants and agreements hereinafter stipulated and agreed to be kept and performed by the said lessee, the said lessor hath let and demised, and doth hereby let and demise unto the said lessee Lots numbered Nine (9), Ten (10) and Eleven (11), in Davidson's subdivision of Square numbered Two hundred and Twenty-two (222), fronting 75 feet on the East side of Fifteenth Street, North West, between New York Avenue and H Street North, in the City of Washington, District of Columbia, together with all the buildings and improvements thereon, and with all the furniture and personal property in said premises, particularly described in a certain Schedule thereof signed in duplicate by the said lessor and the said lessee, and held by them respectively,

24 the said property being now known as the "Hotel Wellington," together with all the rights, privileges and appurtenances thereunto belonging, or in anywise appertaining.

To have and to hold the same to the use of said lessee for and during the term of five years, commencing on the First day of No-

vember, 1900, and terminating on the First day of November, 1905, then to be fully complete and ended, at an annual rental of Seven Thousand Five Hundred Dollars ($7,500.) payable in monthly instalments of Six Hundred and Twenty-five Dollars ($625.00), payable on the first day of each and every month during the continuance of the term of this lease, up to and including the First day of October, 1905, the first instalment of $625.00 to be paid on the First day of November, 1900, or as soon thereafter as this lease shall be executed, and to be for the whole term the sum of Thirty-seven Thousand Five Hundred Dollars ($37,500.00), all payments to be made to the said lessor, or his agent duly appointed in writing.

And the said lessee, in consideration of the lease aforesaid, does hereby covenant and agree to and with the said lessor as follows:

First. That he will faithfully, promptly and punctually pay the aforesaid monthly instalments of rent as they accrue and fall due, as hereinbefore specified, during the continuance of this lease, to the said lessor, or his agent duly appointed.

Second. That the said lessee will promptly and punctually pay all water rents, gas and electric light bills that may become
25 due, and may be charged against said demised premises during said term, the said lessor hereby agreeing to pay the general taxes and the insurance that may be assessed against and placed upon said property.

Third. That the said lessee shall keep the said demised premises and the furniture thereon in good condition and repair during said term, and surrender the same at the end of said term in the like good order and condition as they now are, ordinary wear and tear and damage by the elements excepted.

Fourth. The said lessee shall not assign this lease, or assign or sub-let said demised premises, or any portion thereof, without the written consent of the lessor or his duly authorized agent, first had and obtained, excepting only such portions as may be necessary for the barber shop, cigar stand, livery stable stand, newspaper stand and telegraph office.

Fifth. That no change shall be made in the construction of said building, or in alterations of partitions or stairways without the written consent of the lessor first had and obtained, but the said lessee may, with the written consent of said lessor, make improvements, alterations and extraordinary repairs, and if such improvements, alterations and repairs during the period of this lease equal the sum of five thousand dollars, and are approved by the lessor, the said sum of five thousand dollars will be deducted from the amount of rent paid for said term, it being understood, however, and
26 by this agreement provided, that only one thousand dollars shall be deducted during any one year of said tenancy. All such improvements, repairs and alterations in excess of said five thousand dollars made during the term of said lease shall be made and paid for by the said lessee.

Sixth. That the said lessee shall paint, or cause to be painted, at least twice during the term of this lease, the outside front of said Hotel and the roof and flag-poles thereon.

Seventh. It is further agreed by and between the parties hereto that the said lessee shall have the option to purchase the furniture in and upon the said demised premises at any time within two years from the beginning of the term hereby created, for a sum to be hereafter agreed upon, and it is further agreed that any furniture that may be purchased and placed upon said premises by the lessee, shall be, and remain, the property of said lessee.

Eighth. The said lessee further agrees that the said Hotel shall be operated in accordance with the highest possible standard, and that at no time during the continuance of this lease shall the said Hotel be closed to the public, unless caused by unavoidable accident.

Ninth. It it further agreed by and between the parties hereto that any failure or default by the said lessee, or any person or persons to whom said demised premises may be assigned with the con-
27 sent of the lessor, as aforesaid, or by any person or persons claiming through, by, or under said lessee, in the performance of any or either of the aforesaid covenants, shall at the option of said lessor, or his agent or attorney, work a forfeiture of the term and tenancy hereby created, and said lessor, or his agent acting in his behalf, may at his option re-enter in and upon said demised premises and re-possess the same and said furniture and personal property, and on any resistance being made to such re-entry and re-possession judgment may be entered and execution awarded for possession of the same under the laws of the District of Columbia, commonly referred to as proceedings between landlord and tenant, in favor of said lessor, on a seven days' summons, which summons shall be deemed to be in due form and duly executed if issued upon the petition of, and verified either by the lessor, his agent or attorney, and a copy thereof left upon said premises, the lessee hereby waiving all right to claim a thirty days' notice to quit (and the right of occupancy during the time such notice might run), or other legal notice to remove from said premises. Provided always that any waiver of any breach of any or either of the aforesaid covenants shall not be deemed or held to be a waiver of any other or further breach of any or either of said covenants, or of any right of action for damages by reason of any such breach or breaches.

Tenth. And the said lessor doth hereby covenant with the said lessee that if the rent hereinabove reserved for the term hereinbefore created shall be punctually paid in the manner and at the
28 times hereinabove specified, and each and every covenant herein stipulated to be performed on the part of said lessee shall be kept and performed, said lessee or the person or persons to whom he may assign with the written consent of the lessor as aforesaid, shall have the option to renew this lease for a further term of five years from the termination of the term herein and hereby created, at an annual rental of Eight Thousand Dollars ($8,000.00), which is to be entirely free and clear from all charges and deductions whatsoever, payable monthly in equal monthly instalments in advance, and upon like covenants and conditions as are herein specified; Provided, that written notice of an intention to avail of said option shall be given to said lessor, or his duly authorized agent

or attorney at least three months prior to the termination of the term herein and hereby created.

Eleventh. And said lessor further stipulates and agrees with the lessee that should said demised premises and furniture be destroyed by fire or so damaged by fire or other casualty as to render them uninhabitable and unfit for use, no rent shall be charged for the time that the same shall be and continue in such condition; and in such event the lessee may at his option terminate this lease and the term and tenancy herein and hereby created.

Twelfth. And it is further agreed that the said Henry May, his heirs or personal representatives, shall not in any manner be liable for any diminution of the term hereby created, or for any interference with said lessee's possession of said property.

In testimony whereof, the said lessor and the said lessee
29 have hereunto set their hands and seals in duplicate, on the day and year first hereinbefore written.

HENRY MAY,
Attorney in Fact for Cecilia C. d'Audigne. [SEAL.]
JAS. BARTON KEY. [SEAL.]

Signed, sealed and delivered in the presence of:
[SEAL.] WM. L. F. KING.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. L. F. King, a Notary Public in and for the District aforesaid, do hereby certify that Henry May, who is personally well known to me to be the person who executed the aforegoing and annexed Indenture of Lease, dated November 5th, 1900, personally appeared before me, and acknowledged the same to be the act and deed of his principal.

Given under my hand and Notarial seal this ninth day of November, A. D. 1900.

[SEAL.] WM. L. F. KING,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. L. F. King, a Notary Public in and for the District aforesaid, do hereby certify that J. Barton Key, who is personally known to me to be the person who executed the aforegoing and an-
30 nexed Indenture of Lease, dated the 5th day of November, A. D. 1900, personally appeared before me, and acknowledged the same to be his act and deed.

Given under my hand and Notarial seal this tenth day of November, A. D. 1900.

[SEAL.] WM. L. F. KING,
Notary Public, D. C.

In consideration of the letting of the premises described in the aforegoing and annexed Lease, and of the sum of Five Dollars ($5.00), to us paid by the lessor, the receipt whereof is hereby acknowledged:

We jointly and severally hereby become sureties for the punctual payment of the rent and performance of the covenants in the aforesaid Lease mentioned to be made and performed by J. Barton Key, the lessee named in said Lease; and if any default shall be made in the payment of the rent and performance of the covenants as therein specified, either by said Key, or by any person or persons who may hereafter take and hold said described premises, claiming by, through or under said Key, we do hereby jointly and severally promise, covenant and agree to pay unto the therein named lessor such sum or sums of money, not to exceed Three Thousand Dollars, as will be sufficient to make up such deficiency, and fully satisfy the conditions of the said Lease without requiring any notice of non-payment, or proofs of demand being made.

Given under our hands and seals this fifth (5) day of
31 November, A. D. 1900.

J. BARTON KEY. [SEAL.]
JAMES P. SCOTT. [SEAL.]

Witness:
As to J. Barton Key,
L. E. EVANS.
As to J. P. Scott,
H. C. TUXBURY.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. L. F. King, a Notary Public in and for the District aforesaid, do hereby certify that J. Barton Key, who is personally well known to me to be the person who executed the aforegoing and annexed instrument, dated the 5th day of November, A. D. 1900, personally appeared before me, and acknowledged the same to be his act and deed.

Given under my hand and Notarial seal this tenth (10) day of November, A. D. 1900.

WM. L. F. KING,
Notary Public.

STATE OF N. Y., *County of N. Y., To wit:*

I, H. C. Tuxbury, a Notary Public in and for the State and County aforesaid, do hereby certify that James P. Scott, who is personally well known to me to be the person who executed the aforegoing and annexed Instrument, dated the 5th day of November, A. D. 1900, personally appeared before me, and acknowledged the same to be his act and deed.
32

Given under my hand and Notarial seal this 6th day of November, A. D. 1900.

H. C. TUXBURY,
Notary Public, 76, N. Y. County.

33 *Replication.*

Filed March 2, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 22963.

CHARLES A. LANGLEY, Complainant,

vs.

CECILIA C. D'ANDIGNE ET AL., Defendants.

The complainant hereby joins issue with the defendants, numbered 2, 4, 5, 6, 6½, 7, 8 and 9, upon the several answers by them respectively filed herein.

A. A. HOEHLING, JR.,
Solicitor for Complainant.

34 *Replication.*

Filed March 9, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 22963.

CHARLES A. LANGLEY, Complainant,

vs.

CECILIA C. D'ANDIGNE ET AL., Defendants.

The complainant hereby joins issue with the defendants, Nos. 11 and 12, upon the answer by them filed herein.

A. A. HOEHLING, JR.,
Solicitor for Complainant.

Stipulation.

Filed April 5, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 22963.

CHARLES A. LANGLEY

vs.

CECILIA C. D'AUDIGNE.

Equity. No. 23143.

JAMES LINSKEY ET AL.

vs.

CECILIA C. D'AUDIGNE.

35 Equity. No. 23055.

JAMES LOCKHEAD

vs.

CECILIA C. D'AUDIGNE.

Whereas the above-entitled suits have been filed for the purpose of enforcing certain mechanics' liens against the real estate situated

in said District and known as all of lots 9, 10 and 11, in the subdivision of certain lots in Square 222 made by the heirs of John Davidson as per plat recorded in Liber N. K. pages 63 and 64 of the Records in the Office of the Surveyor for said District.

And whereas certain other lienors against said property are parties defendant or have intervened in said suits for the purpose of enforcing their liens against said property, and all of said suits have been consolidated by order of Court, the said liens being as follows:

Lien No. 4841 by Charles A. Langley for $3771.22;
" " 4842 by James Lockhead for $1417.86;
" " 4844 by Catherine M. McLeod for $836.00;
" " 4850 by William H. McCuen and George R. Herbert, trading as William H. McCuen and Company for $1877.23;
" " 4851 by William H. McCuen for $272.55;
" " 4852 by James Linskey and Edward T. Linskey, trading as James Linskey and Son for $881.25;
" " 4866 by Elmer H. Catlin, trading as Elmer H. Catlin & Co., for $118.05;
" " 4868 by Charles A. Muddiman and Frederick W. Buddicks, trading as C. A. Muddiman and Company for $297.62; and

36

Lien No. 4877 by Frederick W. Daw and Samuel M. Dickson, trading as Daw and Dickson for $758.75.

And whereas it is conceded by the undersigned that the limit of possible recovery under said several liens is the sum of $5,000.00, together with interest thereon and costs of said suits;

And whereas sale has been effected of the certain real estate aforesaid, and the defendant, d'Audigne, owner, is desirous of conveying title free and discharged from said several mechanics' liens, and, to that end, is willing to deposit with trustees the sum of $7,000.00, to abide the result of said several suits, said amount to represent the security now afforded said lienors by said property, and to be impressed with like lien.

Now, therefore, it is stipulated and agreed that in consideration of the deposit by the defendant Cecilia C. d'Audigne of the sum of $7,000.00 with the Union Trust Company of the District of Columbia to the credit of A. A. Hoehling, Jr., J. Miller Kenyon and George E. Hamilton, Trustees, to await the determination of the above-entitled causes, and to be subjected to the payment of any final decree or decrees that may be passed in said causes on behalf of the complainants, or any or either of the parties to said suits, or to be returned to said Cecilia C. d'Audigne in the event that said final decree or decrees are in her favor, all of said lienors through their

attorneys for record hereby stipulate and agree to release the real estate hereinbefore described, from the lien of said Equity suits.

April 3rd, 1906.

A. A. HOEHLING, JR.,
Sol. for Complainant in Equity No. 22963.

37 J. MILLER KENYON,
TUCKER & KENYON, &
E. S. BAILEY,
Sols. for Complainants in Equity No. 23143.
BIRNEY & WOODARD,
Att'ys for Muddiman & Co. & Catlin & Co.
MACKALL MAEDEL,
Sols. for Def't Catherine M. Macleod.
CHAS. W. FITTS,
Sol. for Jas. Lockhead.
GORDON & GORDON,
For Daw & Dixon.

Bill of Complaint.

Filed December 31, 1901.

In the Supreme Court of the District of Columbia.

No. 23055.

JAMES LOCKHEAD
vs.
CECELIA G. D'ANDIGNA, Formerly CECELIA G. MAY, and J. BARTON KEY.

To the Honorable the Justice of the Supreme Court of the District of Columbia, holding a Special Term in Equity:

Your complainant, James Lockhead, respectively represents:

1. That he is a citizen of the United States, a resident of
38 the District of Columbia, and brings this suit in his own right as may hereinafter appear. That the defendant, Cecelia d'Andigna, formerly Cecelia C. May, is a citizen of the United States, and temporarily residing in Paris, France, and is sued in her own right in matters relating to her sole and separate estate, as hereinafter set forth.

That the defendant, J. Barton Key, is a citizen of the United States, a resident of the District of Columbia, and is sued in his own right and in respect to his interests as the same may hereinafter appear.

2. That the defendant Cecelia C. d'Andigna, formerly Cecelia C. May, now is, and at the periods hereinafter specified was, seized and possessed, in fee simple, in her own right, and as her sole and separate estate, of the following lands and premises, situated, lying and being in the city of Washington, District of Columbia, and

known and described as and being: All of lots numbered nine (9), ten (10) and eleven (11) in the subdivision of lots in Square two hundred and twenty-two (222) made by the heirs of John Davidson, as per plat recorded in Liber N. K. at folio 63 *et seq.* of the Record of the Surveyor's Office of the District of Columbia, together with the improvements, way, easements, rights, privileges and appurtenances to the same belonging or appertaining.

3. That on and prior to November first, 1900, said pieces or parcels of land were improved by certain brick buildings which had been for a long time theretofore rented and leased by said defendant d'Andigna, as owner aforesaid, for the conduct therein of an hotel business; but that at or about the said date in No-
39 vember aforesaid the said premises had become and were vacant and were in bad condition and repair, and were generally in an unsuitable, unfit, untenantable and unprofitable condition for the conduct of an hotel business therein, and by reason thereof it became necessary for said defendant, in order to profitably use, lease or enjoy the said premises, to substantially remodel, refit, renovate and repair the same.

4. That thereupon, to wit: on or about the date aforesaid, said defendant d'Andigna made, entered into and executed, with one J. Barton Key, a certain agreement and indenture of lease for the lands and premises aforesaid, for the term of five (5) years ending November 1st, 1905, at a certain stipulated and agreed rental; and that in consideration for the leasing by the said Key of the said land and premises, in the bad condition and want of repair as above shown; and in consideration for the payment of rental therein stipulated and reserved, the said agreement and indenture of lease provided *inter alia,* that the said Key might and should make improvements, alterations and repairs to and upon the premises, to the extent of five thousand dollars ($5,000), the same to be paid for to the extent aforesaid, by the said lessor, Cecelia d'Andigna, party defendant herein; but that all such improvements, alterations and repairs in excess of said five thousand dollars ($5,000) should be paid by the said lessee J. Barton Key.

5. That, thereafter, to wit: on or about the twenty-third day of November, 1900, the said defendant d'Andigna, through and by the said J. Barton Key acting therein for her and in her place
40 and stead as her agent in that behalf thereunto duly authorized, made and entered into a certain contract and agreement with your complainant for the improvement, alteration, repair and renovation of the said premises, the same then being in bad condition and standing and being in need of repairs as aforesaid; it being agreed that for the furnishing of the necessary labor and material for doing said work and making said improvements, alterations and repairs, there should be paid your complainant the sum of two thousand, seven hundred and fifty-five — and fifty cents ($2,755.50). A copy of said agreement is filed herewith and marked "Exhibit A." and made a part of this Bill of Complaint.

6. That in pursuance and performance of said contract your complainant on or about the 24th day of November, 1900, commenced

the work so required of him, as aforesaid, and continued the same from day to day thereafter until on or about the 10th day of January, 1901, when the same was finished and completed, according to the terms of the contract aforesaid, and accepted by the said J. Barton Key, acting as the agent of the said defendant Cecelia d'Andigna, owner as aforesaid, and the same has ever since been retained and used by her.

7. That in addition to making the improvements, alterations, repairs and renovation provided for in said contract, your complainant, at the suggestion and upon the request and agreement to pay for, made by said J. Barton Key acting as the agent of the said defendant d'Andigna as aforesaid, did furnish labor and material for and did make additional improvements, alterations and re-
41 pairs in and upon said premises, not provided for in the contract aforesaid, which additional labor and material was performed and furnished from time to time during the periods hereinbefore mentioned, to wit: the 24th day of November, 1900, and the 10th day of January, 1901, and was accepted by the said J. Barton Key, agent as aforesaid, and the same has ever since been retained and used by the defendant d'Andigna, it being agreed that for the furnishing of the necessary labor and material for doing said work and making said additional improvements, alterations and repairs there should be paid your complainant the sum of three hundred and twelve dollars and seventy-six cents ($312.76) in addition to the two thousand seven hundred and fifty-five dollars and fifty cents ($2,755.50) aforesaid, the same being made up of the several items and charges set forth in the particulars thereof hereto attached and marked "Exhibit B" and made a part of this Bill of Complaint; that each and every of said items and charges is and are a fair and reasonable value of the work, labor and material embraced therein.

8. That your complainant has received the sum of sixteen hundred and fifty dollars ($1650) in partial payment of cash payments as provided for by said agreement of November 23, 1900; that there was on the said 10th day of January, 1901, due your complainant, and unpaid, for labor and material furnished in the said alteration, improvement and repair of the premises aforesaid, according to the terms of said agreement of November 23, 1900, in cash and promis-
hundred
sory notes the sum of eleven thousand and fifty dollars, and for the labor and material furnished for the additional improvements,
42 alterations and repairs aforesaid the sum of three hundred and twelve dollars and seventy-six cents ($312.76), making a total amount due and unpaid to your complainant from said d'Andigna of fourteen hundred and seventeen dollars and eighty-six cents ($1417.86), the same being made up of the several items of credit and charges set forth in the particulars thereof and attached hereto and marked "Exhibit C" and made a part of this Bill of Complaint.

9. That, therefore, on the 6th day of February, 1901, at 4:02 o'clock, P. M., your complainant not having been paid any part of the amount so due him, as aforesaid, he filed with the Clerk of the

Supreme Court of the District of Columbia the notice of lien provided for under and in pursuance of the statute in such cases made and provided, the same being numbered 4842; a true and correct copy of which said notice of lien so filed by your complainant is hereto attached, marked "Exhibit D," and made part of this Bill of Complaint.

10. Your complainant further shows that the said defendant d'Andigna although often thereunto requested has hitherto wholly failed and neglected and still does fail and neglect and refuse to pay to your complainant the amount so due him as aforesaid or any part thereof, and the whole thereof remains and is justly due and owing from the said defendant to your complainant.

11. Your complainant further shows that on the day of Apr. 2d 1901, he filed with the Clerk of the Supreme Court of the District of Columbia a notice of lien numbered 4881 provided for under and in pursuance of the statute in such cases made and pro-
43 vided against the leasehold estate of the lessor, the said J. Barton Key, in and to the land premises aforesaid, for the said amount due your complainant for the said improvement, alteration and repair of the premises aforesaid; a copy whereof is herewith filed & marked Exhibit E & made a part of this Bill of Complaint; that at that time, to wit: on the 2 day of April 1901, said lease was in full force and effect; that thereafter, to wit: during or about the month of July, 1901, and while said lease was in full force and effect and in violation of the provisions thereof, the defendant Cecelia d'Andigna, did re-enter upon and take possession of the premises aforesaid.

And your complainant has been informed and believes and therefore avers that such possession and re-entry by the said defendant d'Andigna was with the acquiescence and consent of the lessee, the said J. Barton Key.

Your complainant is informed and believes and, therefore, avers that said defendant d'Andigna has, subsequent to said re-entry and possession, from a date and for a term of years unknown to your complainant, leased said premises as owner, to a person or persons unknown to your complainant, but that said person or persons are friends or relatives of and are acting in the behalf of said J. Barton Key, and he, the said J. Barton Key, since the leasing of said premises to the said unknown person or persons, has been in possession or control of said premises and he is now conducting an hotel business in and upon said premises.

12. Your complainant further avers that by reason of the premises aforesaid, he has acquired a lien upon the lands and
44 premises aforesaid of the defendant d'Andigna to the extent of the amount so due him, as aforesaid, to wit: the said sum of fourteen hundred and seventeen dollars and eighty-six cents ($1417.86).

Wherefore, the premises considered, and to the end that said lien of your complainant may be established and enforced by decree of this Court, in conformity with law, your complainant prays:

1. That the process of this Court may issue directing the defend-

ants Cecelia d'Andigna, formerly Cecelia C. May, and J. Barton Key, requiring them and each of them to appear and make full, true and complete answer to the exigencies of the foregoing bill of complaint, but not under oath, answer under oath being expressly waived.

2. That in the event said defendants or either of them be not found within the jurisdiction of this Court and shall thereafter fail to enter voluntary appearance herein, an order of publication may be passed herein, in conformity with the statute in such cases made and provided.

3. That the Court shall ascertain and adjudge to complainant the amount properly due him for the work and labor done and furnished and material provided under his said contracts as hereinbefore set forth.

4. That the court will establish and decree in favor of complainant a lien upon and against the land and premises aforesaid to the amount of the indebtedness aforesaid, to wit: fourteen hundred and seventeen dollars and eighty-six cents ($1417.86) with in-
45–53 terest from January 10th, 1901, until paid, together with the costs of this suit for the establishment and enforcement of said lien, and that, in event the amount so decreed to be paid him as aforesaid, be not paid by said defendant d'Andigna at a short period to be fixed by the Court, the said lands and premises, together with all the rights, title and interest therein and thereto of the said defendant d'Andigna, may be decreed to be sold under direction of this Court and that the proceeds of such sale may be applied to the satisfaction of such lien as the Court shall adjudge and decree in favor of complainant upon and against said lands and premises.

5. That this complainant may have such further and other relief as the nature of his case may require.

JAMES LOCKHEAD, *Complainant.*

CHAS. W. FITTS,
Solicitor for Complainant.

DISTRICT OF COLUMBIA, *ss:*

Before me personally appeared James Lockhead, who, being first duly sworn, deposes and says: that he has read the foregoing Bill of Complaint by him subscribed and knows the contents thereof; that the matters and things therein stated of his own knowledge are true; and those stated upon information and belief he believes to be true.

JAMES LOCKHEAD.

Subscribed and sworn to before me this 31 day of Dec. 1901.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR.,
Ass't Clerk.

54 EXHIBIT D.

Mechanics' Lien.

Filed December 31, 1901.

Filed and Recorded Feb'y 6, 1901, at 4.02 o'clock p. m.

Supreme Court, District of Columbia.

No. 4842.

JAMES LOCKHEAD, Claimant,
vs.
CECILIA C. D'ANDIGNA, Formerly CECILIA C. MAY, Owner.

Notice of Lien.

Notice is hereby given that I intend to hold a mechanics' lien upon lots numbered nine (9) ten (10) & eleven (11) in the subdivisions of lots in square numbered two hundred and twenty two (222) made by the heirs of John Davidson as per plat recorded in liber N. K. folio- 63 & 64 of the records of the Surveyor's office of the District of Columbia situate in the City of Washington, in the District of Columbia, and the building thereon, for the sum of One thousand four hundred and seventeen dollars and 86/100 Dollars ($1417 86/100), with interest from Jan'y 15–1901, being amount due to me for labor upon and materials furnished for the remodelling reconstruction and (repair) of said building under and by virtue of a contract with J. Barton Key.

JAMES LOCKHEAD, *Claimant.*

CHAS. W. FITTS, *Att'y.*

55 EXHIBIT E.

Mechanics' Lien.

Filed December 31, 1901.

Filed and Recorded Apr. 2, 1901, at 11.20 o'clock a. m.

Supreme Court, District of Columbia.

No. 4881.

JAMES LOCKHEAD, Claimant,
vs.
J. BARTON KEY, Owner.

Notice of Lien.

Notice is hereby given that I intend to hold a mechanics' lien upon all the right, title, interest and estate of the said J. Barton Key

as tenant and lessee, in and to lots numbered nine (9) ten (10) and eleven, in subdivision of lots in square numbered two hundred and twenty two (222) made by the heirs of John Davidson as per plat recorded in Liber N. K. folio- 63 & 64 of the Records of the Surveyor's Office of the District of Columbia situate in the City of Washington, in the District of Columbia, and the building thereon, for the sum of One thousand four hundred and seventeen *dollars* 86/100 Dollars ($1417 86/100), with interest from Jan'y 15–1901, being amount due to me for labor upon and materials furnished for the remodelling, reconstruction and (repair) of said building under and by virtue of a contract with J. Barton Key.

JAMES LOCKHEAD, *Claimant.*

CHAS. W. FITTS, *Att'y.*

56 *Separate Answer of Cecilia C. d'Andigne.*

Filed April 15, 1902.

In the Supreme Court of the District of Columbia.

Equity. No. 23055.

JAMES LOCKHEAD
vs.
CECILIA C. D'ANDIGNE ET AL.

This defendant, by protestation, not admitting or confessing any of the matters and things in the Bill of Complaint alleged, by reason of the many errors and imperfections therein contained, but expressly reserving all exceptions thereto in the same manner as if she had demurred thereto, for Answer to so much and such parts of said Bill as she is advised is necessary for her to make answer unto, answering, says:—

I. She has no knowledge as to the allegations contained in paragraph one of said Bill, except such as relate to herself, and in so far as the same may be material, calls for strict proof thereof.

She admits that she is a citizen of the United States, and a resident of the City of Paris, France, and has resided in said City during the past six years. She avers that she received no notice whatever of the filing of liens against the property described in the Bill of Complaint until the several suits, pending in this Court were
57 filed to enforce the same.

II. She admits the allegations of paragraph two of said Bill, but says that her title to said property is subject to certain encumbrances in the shape of deeds of trust, which were of record long prior to the date of the transactions set forth in the Bill of Complaint.

III. For answer to paragraph three of said Bill, this defendant admits that said premises had been for several years prior to November 1st, 1900, used for the conduct of an hotel business therein; but she denies that said premises had become on the date aforesaid

in bad condition and in need of repair and generally in an unsuitable and unfit condition for the conduct therein of the business of an hotel, or that it became necessary for this defendant in order to lease the same to substantially remodel, refit, renovate and repair the same. On the contrary this defendant avers the fact to be that on the date aforesaid, said premises were in first class condition, ordinary wear and tear excepted, and in every way suitable for the conduct therein of a first class hotel business.

She further avers that she had no trouble in leasing said premises in the condition they were then in to J. Barton Key, who desired to use the same in the conduct of a first class hotel business. She denies that on the date aforesaid, or at any date subsequent thereto, she did remodel, refit, renovate or repair said premises, or even agree to do so in any degree whatever.

She further denies that in the leasing of said premises to
58 J. Barton Key the condition of said premises as to repair, bore any part or consideration in the agreement between her and said Key as to the amount of rent to be paid by said Key for the use of said premises.

IV. This defendant admits that on the 5th day of November, A. D., 1900, by Henry May, her attorney-in-fact, she entered into a lease with said J. Barton Key for the rental by him of said premises for the term of five (5) years commencing on the first day of November, 1900, and terminating on the first day of November, 1905, said lease reserving therein the rental or sum of Thirty-seven Thousand Five Hundred Dollars ($37,500.00) to be paid by said lessee for the term of said lease, payable in monthly instalments of Six Hundred and Twenty-five Dollars ($625.00) in advance on the first day of each and every month during the continuance of said lease. All of which will more fully and at large appear by reference to said lease, a copy of which is filed herewith marked Defendant's Exhibit No. 1, which said lease, or the copy thereof, is prayed to be read and considered as part hereof.

This defendant further avers that said lease was never recorded among the Land Records of the District of Columbia, or anywhere else, but after the execution thereof, remained in the private possession of the attorney-in-fact of this defendant, or her agent J. V. N. Huyck; and she is advised and believes that neither did the said attorney-in-fact, nor said agent, nor said Key at any time communicate the terms thereof to the Complainant; and this de-
59 fendant is informed and believes and therefore avers, and charges, that whatever work was done or materials furnished by said Complainant, under contract with said Key, was done and furnished upon the personal responsibility of said Key and in entire ignorance by them of the terms and provisions of said lease.

Further answering said paragraph four of said Bill, this defendant denies that "the bad condition and want of repair" of said premises entered into the matter of said lease or the negotiation therefor. She is informed and believes, and therefore avers, the fact to be that there was no agreement between this defendant, or her attorney-in-fact, and said J. Barton Key, that the lessor should be in

any way responsible, or liable, to the extent of Five Thousand Dollars ($5,000.00), or any other sum whatever, for the improvements, alterations or repairs, which might be made upon said premises by said lessee, but on the contrary, that no such matter was brought up for consideration in connection with the negotiation for said lease, and at no time, either prior to the signing of said lease, or subsequent thereto, was it ever contemplated or agreed between the parties to said lease, that this defendant should be in any way bound or liable for the acts of said lessee in the matter of repairs or improvements to be made on said premises.

This defendant avers that the clause in said lease which is referred to in the fourth paragraph of said Bill, does not bear out or justify the allegations contained in said paragraph, but relates to such extraordinary alterations and repairs, which the lessee
60 was at liberty to make, or not, as he might elect, but which, if made with the written consent of the lessor first had and obtained and approved by the lessor, and should equal in value the sum of Five Thousand Dollars ($5,000.00), would entitle the lessee to a deduction from the amount of the rent for said term, of Five Thousand Dollars ($5,000.00); it being understood, however, that if said deduction was made, it should be credited on the amount of the rental for said premises at the rate of One Thousand Dollars ($1,000.00) per year and that any extraordinary repairs or alterations in excess of Five Thousand Dollars ($5,000.00) should be paid for by the lessee; that the clause of said lease referred to reads as follows:—

"Fifth. That no change shall be made in the construction of said building, or in alterations of partitions, or stairways without the written consent of the lessor first had and obtained, but the said lessee may, with the written consent of said lessor, make improvements, alterations and extraordinary repairs, and if such improvements, alterations and repairs during the period of this lease equal the sum of five thousand dollars, and are approved by the lessor, the said sum of five thousand dollars will be deducted from the amount of rent paid for said term, it being understood, however, and by this agreement provided, that only one thousand dollars shall be deducted during any one year of said tenancy. All such improvements, repairs and alterations in excess of said five thousand dollars made during the term of said lease shall be made and paid
61 for by the said lessee;" that said provision was based upon the fulfillment by said lessee of his agreement in its entirety, the desire to have a permanent tenant being a moving consideration for the credit to be allowed said lessee referred to in said paragraph of the lease. This defendant avers, however, that said Key not only did not keep, or perform, the conditions of said lease, on his part to be kept and performed, but that he did not obtain her consent in writing, or otherwise, to make any extraordinary repairs or improvements on said premises, and he paid rent for said premises only up to, and including, December, 1900. That on February 5, 1901, said premises were taken possession of by Receivers appointed by this

Court in the case of James P. Scott against J. Barton Key, Equity No. 22,044; that said Receivers closed said hotel on March 20, 1901, under order of this Court, and on April 22, 1901, reported to the Court sale of all the goods, chattels and personal property of said Key located upon said premises. Said sale was ratified by the Court on May 14, 1901, and said Receivers ordered to turn over said premises to this defendant on June 3, 1901. That by reason of the failure of said Key, this defendant not only lost a permanent tenant, and the rent of said premises for more than seven (7) months, but she was called upon to expend large sums of money in the employment of counsel to protect her interest in the several contests before the Court between the said Key and his creditors.

V, VI, and VII: Answering paragraphs fifth, sixth, and
62 seventh of said Bill, this defendant says she has no knowledge of the execution of a contract between Complainant and said J. Barton Key, or of the provisions thereof, and in so far as the same may be material, calls for strict proof thereof. She denies all the other allegations in said paragraph contained.

Further answering said paragraphs, this defendant denies that said J. Barton Key was ever authorized or directed; or, as a matter of fact, did, enter into a contract of any character with the Complainant, as her agent, or in her behalf, and she denies that any such contract was, in fact, ever executed. She avers that neither by the terms of said lease, nor by authority of the negotiations with the attorney-in-fact for said lease, was there ever any understanding or agreement between the parties thereto that said Key should in anywise be the agent of this defendant, but on the contrary it was distinctly understood and agreed between said parties that the only relation which should arise between the parties was that of lessor and lessee.

She denies that she ever paid the Complainant any sum whatever on account of his said contract, or that the said Key paid said sums as her agent, or on her behalf, and she avers that whatever payments were made by said Key to Complainant were made entirely with his own money and on his own behalf, and were so received and credited by the said Complainant.

Further answering said paragraph six (6), this defendant denies that she has been in possession of said premises since the 10th day of January, 1901, and receiving income therefrom. On the
63 contrary she avers that the record of said Equity Cause No. 22,044 shows that the Receivers appointed by this Court took possession of said premises under order of the Court passed February 5th, 1901, and said premises were turned over to this defendant by order passed June 3rd, 1901; that prior to said 5th day of February, 1901, said premises were in the exclusive possession of this defendant's lessee, J. Barton Key. She further avers that the record in said Equity Cause No. 22,044, shows that this defendant has received no rent whatever from said premises since the first day of January, 1901.

Further answering said paragraph seven (7) she denies that said

Key, acting as the agent for her, ever made any contract with the Complainant for extra work, alterations or repairs, or that he was ever authorized by her directly, or indirectly to make such contract, and in so far as the same may be material she calls for strict proof thereof.

VIII. Answering paragraph eight of said Bill of Complaint this defendant denies that she made any payments whatever to the Complainant, or that any such payments were made at her direction, or on her behalf, or that any such payments were made under any agreement made by this defendant, or on her behalf to said Complainant. She denies that there is any sum whatever due from her to the Complainant. She avers that if the Complainant did any work at all upon said premises, it was under personal agreement with the lessee, Key, and that all payments made by said Key to said Complainant, were made on account of his individual liability to Complainant, and were so received and credited by Complainant.

64 IX and X. This defendant can neither admit nor deny the allegations of paragraphs nine and ten of said Bill as to the amount due Complainant from J. Barton Key and the filing of mechanics' Liens by said Complainant, but in so far as same may be material, calls for strict proof thereof. She denies that there ever was, or is now, any amount whatever, due from her to the Complainant, or that there ever was any contract, of any kind, existing between the Complainant, and herself.

XI. This defendant has no knowledge of the filing of notices of liens against the leasehold interest of said Key in said premises as set forth in paragraph eleven of said Bill and she calls for strict proof thereof. She denies that said lease was in full force and effect either on the 15th day of February, 1901, or during the month of July, 1901. On the contrary the terms of said lease were violated by said Key on the first day of January, 1901, when he defaulted in the payment of rent, and thereafter the operation of said lease and the rights of the landlord thereunder, were suspended by the action of this Court in appointing Receivers to take charge of said property, as is more fully set forth in paragraph four of this Answer. That under the direction of this Court all the right, title and interest of said Key in said premises was sold at public auction, and said Receivers ordered to put this defendant in possession thereof. This defendant is advised that by reason of the several orders of the Court passed in said case of Scott against Key, Equity No. 22,044 all title and interest of said Key under said lease has ceased

65 and determined by operation of law, by virtue of said several orders, and whatever liens Complainant may have had against the leasehold interest of said Key, have become nugatory and their rights thereunder transferred to the funds in the hands of the Receivers. That many of said lienors recognizing such to be the law, have filed their claims before the Auditor, asking that they be allowed the amounts due them out of said funds.

Further answering paragraph eleven of said Bill, this defendant denies that she re-entered and took possession of said premises with

the consent of said Key, and she denies that subsequent to said re-entry did she lease said premises to a person or persons acting in behalf of said Key, or that he is now in the possession and control thereof. She avers the fact to be that said premises are under lease to a Corporation, incorporated under the laws of the State of New Jersey, and that said Key is not known in the transaction at all, and so far as this defendant is concerned, has nothing whatever to do with the matter.

XII. This defendant denies each and every of the allegations contained in paragraph twelve of said Bill, and calls for strict proof thereof.

And having fully answered she prays to be hence dismissed with her reasonable costs.

CECILIA C. D'ANDIGNÉ,
By HAMILTON & COLBERT,
Her Solicitors.

Oath and personal signature waived.
CHAS. W. FITTS.

66 *Replication.*

Filed August 3, 1903.

In the Supreme Court of the District of Columbia.

Eq. 23055.

JAMES LOCKHEAD
vs.
J. BARTON KEY ET AL.

The plaintiff joins issue on Defendants' answer.

CHAS. W. FITTS,
Sol. for Lockhead.

Order Consolidating Nos. 23055 *and* 22963, *Equity.*

Filed April 6, 1906.

In the Supreme Court of the District of Columbia.

Eq. 23055 Consolidated with Eq. 22963.

JAS. LOCKHEAD
vs.
CECILIA D'AUDIGNE ET AL.

This case coming on to be heard on motion of the Solicitor for the complainant and no objection having been made by the defendant it is this 6″ day of April 1906 ordered that the above

entitled causes be & they are hereby consolidated for the purposes of hearing & all depositions & papers filed in either shall be considered as filed in both.

HARRY M. CLABAUGH,
Chief Justice.

67 *Bill of Complaint.*

In the Supreme Court of the District of Columbia.

Eq. No. 23143.

JAMES LINSKEY and EDWARD T. LINSKEY, Copartners, Trading as James Linskey and Son; WILLIAM H. McCUEN (Individually), WILLIAM H. McCUEN and GEORGE R. HERBERT, Copartners, Trading as McCuen and Company, Complainants,

vs.

CECILIA C. D'AUDIGNA (*formally* CECILIA C. MAY), J. BARTON KEY, CHARLES A. LANGLEY, JAMES LOCKHEAD, CATHERINE M. McLEOD, ELMER H. CATLIN, Trading as Elmer H. Catlin and Company; CHARLES A. MUDDIMAN and FREDERICK M. BUDDICKS, Corpartners, Trading as C. A. Muddiman and Co., and FREDERICK W. DAW and SAMUEL H. DIXON, Copartners, Trading as Daw and Dixon, Defendants.

To the Supreme Court of the District of Columbia, holding an Equity Court:

Your complainants respectfully represent:—

1. That they are all citizens of the United States and residents of the District of Columbia; that James Linskey and Edward T. Linskey are copartners engaged in the business of house and sign painting, etc. and trade under the name of James Linskey and Son; that William H. McCuen is a dealer in furnaces, stoves etc. and brings this suit in his own right as hereinafter set forth; that William H. McCuen and George R. Herbert are copartners trad-

68 ing as William H. McCuen and Company and are engaged in the business of steam and hot water heating.

That the defendant Cecilia C. d'Audigna (*formally* Cecilia C. May) is a citizen of the United States, but at the present time resides in the Republic of France and is sued in her own right in the respect of matters relating to her sole and separate estate as hereinafter set forth.

That the defendant, J. Barton Key, is a citizen of the United States and a resident of the District of Columbia and is sued in his own right in respect to his interest as hereinafter appearing.

That all the other defendants are citizens of the United States as complainants are informed and believe and the others are all claimants under that portion of the laws of the District of Columbia which relates to the Mechanic's Liens, that each of the said defendants has filed in the office of the clerk of the Supreme Court of the District

of Columbia a notice of lien, claiming respectively lien upon and against the lands and premises hereinafter described, said liens being numbered as follows:—

No. 4841, filed February 5, A. D. 1901 at 2:40 o'clock P. M. by Charles L. Langley with interest from January 26, 1901, for.....	$3771.22
69 No. 4842, filed February 6, 1901, at 4:02 o'clock P. M. by James Lockhead with interest from January 15, 1901 for.....	1417.66
No. 4844, filed February 7, 1901 at 10:25 o'clock A. M. by Catherine M. McLeod with interest from February 6, 1901 for	836.00
No. 4866, filed February 28, 1901 at 1:30 o'clock P. M. by Elmer H. Catlin, trading as Elmer H. Catlin and Company with interest from February 1, 1901, for..	118.05
No. 4868, filed February 28, 1901 at 1:30 o'clock P. M. by Charles A. Muddiman and Frederick W. Buddicks, co-partners trading as C. A. Muddiman and Company with interest from February 15, 1901 for.....	297.62
No. 4877, filed March 23, 1901, at 11:10 o'clock A. M. by Frederick W. Daw and Samuel M. Dixon, co-partners trading as Daw and Dixon with interest from February 1, 1901, for.....	758.75
Total amount of liens claimed by said defendants, exclusive of that claimed by your complainants	$7199.30

70 That the said liens, notices of which have been so filed do not appear of record to be satisfied at the time of the filing of this bill of complaint and said lienors are therefore made parties defendant to this suit as required by the statute in this behalf made and provided.

2. That the defendant, Cecilia C. d'Audigna now is and at all times hereinafter specified was, seized and possessed of, in fee simple as her sole and separate estate the following lands and premises, situated, lying and being in the city of Washington, District of Columbia and known and designated as follows:

All of lots numbered Nine (9), Ten (10) and Eleven (11) in the sub-division of lots in square numbered Two hundred and twenty-two (222) made by the heirs of John Davidson, as per plat recorded in Liber N. K. at folios 63 and 64 of the records of the Surveyor's Office of the District of Columbia together with the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining.

3. That on and prior to November first, A. D. 1900, said pieces and parcels of land were improved by certain brick buildings, which had heretofore been rented and leased by the defendant d'Audigna, as such owner aforesaid, for the conduct therein of an hotel business, but that on or about the date last aforesaid said premises had become vacant and were in a bad condition and in need of repair,

and were generally in an unsuitable and unfit condition for
71 the conduct of the business of an hotel, as aforesaid; and that by reason thereof it became necessary for said defendant, in order to profitably use or lease the said premises to substantially remodel, refill, renovate and repair the same.

4. That thereupon, on or about the date last aforesaid said defendant, d'Audigna, made, entered into and executed with the defendant J. Barton Key a certain agreement and indenture for the lands and premises aforesaid, for the term of five years, ending November 1st, A. D. 1905, at certain stipulated and agreed rentals.

That in consideration for the leasing by the said Key of the said lands and premises, in the then bad condition and want of repair thereof, as above set forth; and in consideration of rental therein stipulated and reserved, the said agreement and indenture of lease provided, *inter alia,* that the said Key might and should make improvements, alterations and repairs to and upon the premises aforesaid, to the extent of Five thousand dollars ($5000), the same to be paid to the extent aforesaid, by the said leasor, the said Cecilia d'Audigna, party defendant herein; and that all such improvements, alterations and repairs in excess of said sum of Five Thousand Dollars ($5000) should be paid for by the said Leasee, the said defendant, J. Barton Key.

That thereafter, to wit, on or about the 20th day of November, A. D. 1900, the said defendant d'Audigna through and by the said J. Barton Key acting therein for her and as her agent in that
72 behalf thereunto duly authorized, made and entered into certain contracts with complainants for the improvement, alteration and repair of the said premises, the same being then in a bad condition and standing and being in need of repairs as aforesaid, the defendants thereby agreed that for the necessary labor and materials for the doing of said work and the making of said improvements, alteration and repairs, there should be paid under the contract to your complainants James Linskey and Son, the sum of one thousand, two hundred and eighty-one dollars and twenty-five cents ($1281.25); that the contract aforesaid required said Linskey and Son to do and execute certain painting, tinting, varnishing, enameling, kalsomining and cleaning in and about the premises hereinbefore set forth, which premises were then known as the "Wel-ington Hotel" but now known as "Barton's." That the said contract price is subject to certain credits made on account thereof by the same means and agency as the contract itself, said credits having been made in the amounts and at the times following: to wit, December 21, 1900, the sum of one hundred dollars ($100), January 5th, 1901, the sum of one hundred dollars ($100), January 11, 1901, the sum of one hundred dollars ($100), January 24, 1901, the sum of one hundred dollars ($100), making a total of four hundred dollars ($400) leaving the sum of eight hundred and eighty-one dollars and twenty-five cents ($881.25) justly due and owing to these complainants, Linskey and Son, all of which will appear by

reference to an itemized statement of said work and the agreed charges therefor marked "Exhibit No. 1."

73 6. That in and for the same consideration as set forth in paragraph four, the defendant d'Audigna through and by the same means and agency as in said paragraph set forth, entered into a contract, verbal, with the complainant William H. McCuen, individually, for the erection of certain guttering, roofing, spouting and repairs in and about the ranges, etc., of the said premises and agreed in said contract to pay to the said complainant William H. McCuen the sum of two hundred and seventy-two dollars and fifty-five cents ($272.55) all of which is still justly due and owing to the complainant McCuen; that a statement of said work and the agreed charges therefore is herewith filed and marked "Exhibit No. 2."

7. That in and for the same consideration as set forth in paragraph four the defendant d'Audigna through and by the same means and agency as in said paragraph set forth, entered into written specifications and contract with the complainants William H. McCuen and George R. Herbert trading as McCuen and Company, said specifications and contract being dated November 21st, 1900, and wherein the said copartners were required to erect, construct and apply certain steam heating and steam fitting appliances and apparatus in and about the then "Wellington Hotel" now known as "Barton's" and for which steam heating, etc., the complainants were to receive the sum of two thousand and sixty dollars ($2060); that as the work progressed certain "extra" apparatus, etc., were by the same agency and means ordered to be done, said extra apparatus, etc., being to the extent of three hundred and seventeen dol-

74 lars and twenty-three cents ($317.23), making the total cost of the same two thousand, three hundred and seventy-seven dollars and twenty-three cents ($2377.23); that subsequently, to wit, on the 20th day of December, A. D. 1900, there was paid to these complainants on account of said specifications and contract, the sum of five hundred dollars ($500) thus reducing the claim of the said complainants to the sum of eighteen hundred and seventy-seven dollars and twenty-three cents ($1877.23), which is now justly due to the said McCuen and Herbert trading as aforesaid; that the original of said specifications and contract and a statement showing the extra work, original contract price and all credits which have been made at any time upon said contract or extras are herewith filed and marked "Exhibit- Nos. 3 and 4," respectively.

8. That in pursuance of said agreements your complainants commenced the work so required by them as aforesaid and continued same from day to day until their part of the agreement was fully complied with according to the terms of their contract and that thereafter the work by them was duly accepted by the defendant, the said J. Barton Key acting as the agent of the said defendant, Cecilia d'Audigna and the same has ever since been retained and used by her and that the said defendant d'Audigna in consequence thereof has received and is still in receipt of large income, gains and profits from the rental of said lands and premises.

That each and every item of the charges complainants have set forth in their said exhibits is just and true and is the fair and reasonable value for the work, labor and materials set forth hereinafter.

75 9. That thereafter on or about, to wit, the fifteenth day of February, A. D. 1901, at 2:15 and 3:15 o'clock P. M. respectively your complainants trading as James Linskey and Son, your complainant William H. McCuen and complainants trading as McCuen and Company filed with the clerk of the Supreme Court of the District of Columbia the notice of lien provided for under and by virtue of the laws of the District of Columbia relating to Mechanic's Liens, the same being filed by complainants by reason of their not having been paid any part of the amounts due them excepting the credits as aforesaid; their said liens being numbered 4852, 4850 and 4851 respectively and true copies of said notices of liens so filed by complainants are hereto attached, made a part hereof and marked "Exhibits Nos. 5, 6, and 7" respectively.

10. Your complainants further state that although often requested to pay the amounts due them, the said defendants d'Audigna and Key have wholly neglected and failed and still neglect and fail to pay to the complainants the amounts due them as aforesaid nor any part thereof excepting the amounts credited, and the whole of the several sums due them remain due and are justly owing from the defendant d'Audigna.

11. Your complainants further show that on the 15th day of February, A. D. 1901, they filed with the clerk of the Supreme Court of the District of Columbia a notice of liens numbered as aforesaid provided for under and in pursuance of the statute in such cases made and provided against the leasehold estate of the

76 *leasor,* the said J. Barton Key, in and to the land and premises aforesaid, for the said amounts due your complainants for the said improvement, alteration and repair of the premises aforesaid; that at that time, to wit, the 15th day of February, 1901, the said lease was in full force and effect; that thereafter, to wit, during or about the month of July, 1901, and while said lease was in full force and effect and in violation of the provisions thereof, the defendant Cecilia d'Audigna, did re-enter and take possession of the premises aforesaid.

And your complainant has been informed and believes and therefore avers that such possession and re-entry by the said defendant d'Audigna was with the acquiescence and consent of the leasee, the said J. Barton Key.

Your complainants are informed and believe and therefore aver that said defendant d'Audigna, subsequently to said re-entry and possession, from a date and for a term of years unknown to your complainants, leased said premises as owner, to a person or persons unknown to your complainants, but that said person or persons are friends or relatives of and are acting in the behalf of said J. Barton Key, and he, the said J. Barton Key, since the leasing of said premises to the said unknown persons or persons, has been in possession

or control of said premises and he is now conducting an hotel business in and upon said premises.

12. Complainants further aver that by reason of the premises aforesaid, they have acquired a lien upon the lands and premises aforesaid of the said defendant d'Audigna, to the extents
77 of the amounts so due them aforesaid; the said Linskey and Son in the sum of eight hundred and eighty-one dollars and twenty-five cents ($881.25) with interest from the 17th day of December, A. D. 1900, and the said William H. McCuen in the sum of two hundred and seventy-two dollars and fifty-five cents ($272.55) with interest from the 31st day of January, A. D. 1901, and in the sum of eighteen hundred and seventy-seven dollars and twenty-three cents ($1877.23) due to the complainants McCuen and Herbert trading as McCuen and Company together with interest thereon from the 21st day of November, A. D. 1900.

Wherefore, the premises considered, and to the end that said liens of complainants may be established and enforced by decree of this court, in conformity with law, complainants pray:

1. That the process of this court may issue directed to the defendants, Cecilia d'Audigna, formally Cecilia C. May, Charles A. Langley, James Lockhead, Catherine H. McLeod; Elmer H. Catlin, trading as Elmer H. Catlin and Company; Charles A. Muddiman and Frederick W. Buddicks, trading as C. A. Muddiman and Company, and Frederick W. Daw and Samuel M. Dixon, copartners trading as Daw and Dixon and J. Barton Key; requiring them and each of them to appear and answer the exigencies of the foregoing bill of complaint, but not under oath, answer under oath being hereby expressly waived.

2. That in the event said defendants or any of them be not found within the jurisidction of this court, and shall thereafter fail to enter voluntary appearance herein, an order of publication
78 may be passed herein, in conformity with the statutes in such cases made and provided.

3. That the court shall ascertain and adjudge to complainants the amounts properly due them and each of them for the work and labor done and materials furnished and provided under their said agreement as hereinbefore set forth.

4. That the court will establish and decree in favor of complainants, a lien upon and against the lands, lease and premises aforesaid in the amounts of their respective indebtedness hereinbefore set forth, to wit, the sum of eight hundred and eighty-one dollars and twenty-five cents ($881.25) with interest thereon from December 17th, 1900 due to complainants Linskey and Son until paid; the sum of two hundred and seventy-two dollars and fifty-five cents ($272.55) with interest thereon from the 31st day of January 1901 until paid due to the said William H. McCuen and the sum of eighteen hundred and seventy-seven dollars and twenty-three cents with interest thereon from the 21st day of November A. D. 1900 due to the complainants trading as McCuen and Company together with costs of this suit for the establishment and enforcement of said liens and that in the events the amounts so decreed to be paid them

by the defendant d'Audigna at a short day to be fixed by the court that the said lands and premises together with all the right, title and interest therein and thereto of the said defendant d'Audigna may be decreed to be sold, under the direction of this court and that
79 the proceeds of such sale shall be applied to the satisfaction of such liens as the court shall adjudge and decree in favor of complainants upon and against said land and premises and lease.

5. That the complainants may have all such other and further relief as to the court may seem meet and proper.

JAMES LINSKEY & SON,
WILLIAM H. McCUEN,
WM. H. McCUEN & COMPANY,
Per KENYON,
Complainants.

THOS. B. HUYCK,
Per KENYON AND
J. MILLER KENYON,
Solicitors for Complainants.

The defendants to this bill are: Cecilia C. d'Audigna, *formally* Cecilia C. May; J. Barton Key: Charles A. Langley; James Lockhead; Catherine M. McLeod; Elmer H. Catlin, trading as Elmer H. Catlin and Company, Charles A. Muddiman and Frederick W. Buddicks, copartners, trading as C. A. Muddiman and Company and Frederick W. Daw and Samuel H. Dixon, copartners trading as Daw and Dixon.

DISTRICT OF COLUMBIA, *ss:*

We do solemnly swear (J. Miller Kenyon being affirmed)
80 that we have read the bill by us subscribed and know the contents thereof and that the facts therein stated upon our personal knowledge are true and those stated upon information and belief we believe to be true.

EDWARD T. LINSKEY,
J. MILLER KENYON,
Att'y- for W. H. McCuen and W. H. McCuen & Co.

Subscribed and sworn to before me this 14th day of February A. D., 1902.

[SEAL.]

HARRY D. GORDON,
Notary Public, D. C.

81 "EXHIBIT No. 1."

Mr. J. Barton Key to James Linskey & Son, Dr.

Dec. 17.	To painting & penciling front of Barton Hotel	$275.00	
	" painting brick & wood work on South wall	50.00	
	" painting wood work of 16 bath rooms	64.00	
	" varnishing interior of front windows	50.00	
	" touching up & varnishing wood work in rooms & halls of four stories	200.00	
	"		$639.00
	" tinting ceiling & back walls of gallery & under gallery & painting wood work in banquet hall	133.00	
	" tinting ceilings & varnishing wood work of four rooms north of banquet hall	82.00	
	" painting & enameling wood work in south west room first floor, middle room & bath room	40.00	
	" painting & enameling wood work in room north of entrance	20.00	
	" kalsomining & painting wood work in pantry	6.00	
	" painting wood work in rooms 35 & 36 first floor three coats	27.00	
	" painting wood work in rooms adjoining bar & barber shop	19.00	
	" cleaning off & painting bar fixtures four coats & painting wood work of bar	68.00	
			395.00
82	To amount brought forward		$1034.00
	" painting wood work in bath room first floor	4.50	
	" Staining & varnishing floor & varnishing wood work in office	34.00	
	" painting wood work in basement two coats	27.00	
	" painting north wall two coats & sign	25.00	
	" painting sign on south wall	5.00	
	" " rooms 101–2–3, 4 & second story hall	48.50	
	" painting extra work on front storm doors, bay windows & iron rail	11.00	
	" painting wood work in rooms 105 & 7 third story & hall	27.25	

To painting vestibule walls three coats..	5.00	
" " graining & varnishing wood work in club room, staining & varnishing floor.....	27.00	
" touching up & varnishing wood work first floor & elevator.....	26.00	
" touching up & varnishing in cafe...	7.00	
		247.25
		$1281.25

1900.					
Dec. 21.	Cr. by Check.....	.....	.....	$100.00	
1901.					
Jan. 5.	"	"	"	.....	100.00
" 11.	"	"	"	.....	100.00
" 24.	"	"	"	.....	100.00
					$400.00
					$881.25

83 EXHIBIT No. 2.

WASHINGTON, D. C., *Feb.* 14, 1901.

Mr. J. Barton Key, for Barton Hotel, to William H. McCuen, Dr.

Jan. 31. To account rendered..... 272.55

Filed by
J. MILLER KENYON & THOS. B. HUYCK,
Wash. D. C.

84 "EXHIBIT No. 3."

Specification and Contract.

For Direct Steam Heating Apparatus.

Owner: Mr. J. Barton Key.
Address: Wellington Hotel.
Submitted by: W. H. McCuen H. & V. Co.
Address: 1024 Conn. Ave.

We submit herewith specifications and bid for the construction of a Direct Steam heating apparatus in the Wellington Hotel, Washington, D. C.

Principle of construction.—This apparatus shall be constructed as a One Pipe Job and in such a manner as to insure free circulation throughout the entire apparatus while the radiators on any floor may be shut off, without interfering with the circulation of the system.

Run the necessary Piping, Mains, Risers, etc., of proper size, from

Boilers to the several locations, and connect with Radiators; furnish and place in Main Pipe, one reducing valve of Proper size.

The condens-ion from Heating Apparatus is to be returned to Boilers by means of Automatic Pump & Receiver.

Radiation.—The direct radiation shall consist of Direct 38″ high Radiators of which there shall not be less than 1759 sq. ft. to be placed in the rooms as specified in the accompanying schedule.

Piping.—Furnish and run all necessary pipe of ample size for free circulation, same to be of best quality, the ends to have
85 sound tapered threads and are to be properly reamed and all obstructions removed before being put together.

Risers.—The rising lines of pipe to radiators above first floor will run outside of partitions.

Fittings.—All fittings to be heavy cast grey iron of approved quality.

Hangers.—All pipe lines in basement to be supported by neat strong hangers properly fastened to timbers over head.

Ceiling and floor plates.—Where pipes pass through floor or ceiling, the openings shall be fitted with proper floor and ceiling plates.

Valves and air cocks.—Each direct radiator to be furnished with one nickel plated wood wheel Angle Union radiator valve on supply also nickel plated ⅛ air valve W. W.

Bronzing.—All radiators and exposed pipes above cellar put in by us to be bronzed or painted plain as owner may select, and all basement pipes to have one coat of best japan.

Notification of completion.—Upon notification that the work herein specified is complete, it shall be promptly inspected and accepted or rejected by the owner, so that the mechanics, while still on the premises, may without delay complete it, or remedy any defect that may appear, it being agreed that such acceptance shall not be deemed a waiver of guarantee. If not inspected immediately upon completion, the apparatus will be left in charge of the owner and responsibility for it rests in him. Failure to so promptly inspect and accept or reject said work shall be construed as an acceptance of said work and shall entitle us to payment according to contract.

If after this apparatus shall have been accepted by you,
86 any part thereof constructed by us under this proposal shall fail to fulfill the guarantee herein contained by reason of any defect in the same, we agree to remedy such defect at our own cost within a reasonable time after receiving written notice of such defect.

The term "defect" as above used, shall not be construed as embracing such imperfections as would naturally follow improper usage, accident or the wear and tear of use.

It is distinctly understood that no payment or part thereof are to be delayed on account of cold weather in which to test this heating apparatus, as the guarantee herein contained is binding on the contractor as to the fulfillment of contract. It is further understood that such acceptance shall not be deemed a waiver of guarantee as to efficiency of the apparatus.

Proposal.

We offer to furnish and construct a Direct Steam heating apparatus complete in accordance with the above specification for the sum of Twenty-hundred & Sixty & 00/100 Dollars, $2060 00/100.

(Signed) W. H. McCUEN & CO.,
Per G. R. HERBERT.

Dated at —— 189–.

Terms: Payments for the above to be made as follows:
$500.00 When piping is roughed in.
$560.00 When job is completed.
$500 in a promissory note for 4 mos.
$500 " " " " for 6 mos.
The notes to be endorsed by James P. Scott.

87 *Acceptance.*

The foregoing proposal with its specifications, terms and conditions is hereby accepted and agreed to.

(Signed) J. BARTON KEY.

Dated at Washington, D. C. Nov. 21, 1900.

Schedule of Radiation.

Room.

5 S. E. Bath Rooms.
1st Floor & Halls to be increased 250 ft.; the Basement Hall to have 2 Radiators, 200 ft. All other rooms to have 15 ft. less than 1 to 80 of their cubical contents, as per schedule furnished by you.

88 EXHIBIT No. 4.

WASHINGTON, D. C., *Feb.* 14, 1902.

Mr. J. Barton Key, for "Barton" Hotel, to William H. McCuen, Dr.

1901.		
Jan. 31.	To steam heating, as per estimate, by W. H. McCuen & Co.	2060.00
"	Extra, by W. H. McCuen & Co	317.23
		2377.23

CREDIT.

1900.		
Dec. 20.	By cash on account	500.00
		1877.23

89 EXHIBIT No. 5.

Supreme Court, District of Columbia.

Filed and Recorded Feb. 15, 1901, at 2.15 o'clock p. m.

No. 4852.

JAMES LINSKEY and EDWARD T. LINSKEY, Copartners, Trading as James Linskey and Son, Claimants,

vs.

J. BARTON KEY and CECILIA C. D'ARDIGUE (Formerly CECILIA C. MAY), Owners.

Notice of Lien.

Notice is hereby given that we intend to hold a mechanics' lien upon Lots numbered Nine (9) Ten (10) and Eleven (11) in the subdivision of lots in Square numbered Two hundred and twenty-two (222) made by the heirs of John Davidson as per plat recorded in Liber "N. K." folio 63 and 64 of the records of the Surveyor's office of the District of Columbia, situate in the City of Washington, in the District of Columbia, and the building thereon, for the sum of Eight hundred and eighty-one and 25/100 Dollars ($881.-25/100), with interest from December 17th, 1900, being amount due to us for labor upon and materials furnished for the remodelling reconstruction and repair of said building under and by virtue of a contract with J. Barton Key.

JAMES LINSKEY AND
EDWARD T. LINSKEY,
Copartners, Trading as James Linskey & Son, Claimants,
By J. MILLER KENYON,
Att'y for Claimants.

90 EXHIBIT No. 6.

Supreme Court, District of Columbia.

Filed and Recorded Feb. 15th, 1901, at 3.15 o'clock p. m.

No. 4851.

WILLIAM H. MCCUEN, Claimant,

vs.

J. BARTON KEY and CECILIA C. D'ARDIGUE (Formerly CECILIA C. MAY), Owners.

Notice of Lien.

Notice is hereby given that I intend to hold a mechanics' lien upon Lots numbered Nine (9) Ten (10) and Eleven (11) in the

subdivision of lots in Square number Two hundred and twenty-two (222) made by the heirs of John Davidson as per plat recorded in liber "N. K. folio 63 and 64 of the records of the Surveyor's office of the District of Columbia, situate in the City of Washington, in the District of Columbia, and the building thereon, for the sum of Two hundred and seventy-two and 55/100 Dollars ($272.55/100), with interest from January 31st 1901, being amount due to me for labor upon and materials furnished for the remodelling, reconstruction and repair of said building under and by virtue of a contract with J. Barton Key.

WILLIAM H. McCUEN, *Claimant,*
By J. MILLER KENYON,
Att'y for Claimant.

91 EXHIBIT No. 7.

Supreme Court, District of Columbia.

Filed and Recorded Feb. 15th, 1901, at 3:15 o'clock p. m.

No. 4850.

WILLIAM H. McCUEN and GEORGE R. HERBERT, Copartners, Trading as William H. McCuen and Company, Claimants,

vs.

J. BARTON KEY and CECILIA C. D'ARDIGUE (Formerly CECILIA C. MAY), Owners.

Notice of Lien.

Notice is hereby given that we intend to hold a mechanics' lien upon Lots numbered Nine (9) Ten (10) and Eleven (11) in the Subdivision of lots in Square numbered Two hundred and twenty-two (222) made by the heirs of John Davidson as per plat recorded in Liber "N. K." folio 63 and 64 of the records of the Surveyor's Office of the District of Columbia, situate in the City of Washington, in the District of Columbia, and the building thereon, for the sum of eighteen hundred and seventy-seven and 23/100 Dollars ($1877.23/100), with interest from November 21st 1900, being amount due to us for labor upon and materials furnished for the remodelling, reconstruction and repair of said building under and by virtue of a contract with J. Barton Key.

WILLIAM H. McCUEN AND
GEORGE R. HERBERT,
Co-partners, Trading as
William H. McCuen & Company, Claimants.
By J. MILLER KENYON,
Att'y for Claimants.

92 *Answer.*

Filed April 15, 1902.

In the Supreme Court of the District of Columbia.

Equity. No. 23143.

JAMES LINSKEY ET AL.
vs.
CECILIA C. D'AUDIGNE.

This defendant, by protestation, not admitting or confessing any of the matters and things in the Bill of Complaint alleged, by reason of the many errors and imperfections therein contained, but expressly reserving all exceptions thereto in the same manner as if she had demurred thereto, for Answer to so much and such parts of said Bill as she is advised is necessary for her to make answer unto, answering says:

I. She has no knowledge as to the allegations contained in paragraph one of said Bill, except such as relate to herself, and in so far as the same may be material, calls for strict proof thereof.

She admits that she is a citizen of the United States, and a resident of the City of Paris, France, and has resided in said City during the past six years. She avers that she received no notice whatever of the filing of liens against the property described in the Bill of Complaint until the several suits, pending in this Court were filed to enforce the same.

93 II. She admits the allegations of paragraph two of said Bill, but says that her title to said property is subject to certain encumbrances in the shape of deeds of trust, which were of record long prior to the date of the transactions set forth in the Bill of Complaint.

III. For answer to paragraph three of said Bill, this defendant admits that said premises had been for several years prior to November 1st, 1900, used for the conduct of an hotel business therein; but she denies that said premises had become on the date aforesaid in bad condition and in need of repair and generally in an unsuitable and unfit condition for the conduct therein of the business of an hotel, or that it became necessary for this defendant in order to lease the same to substantially remodel, refit, renovate and repair the same. On the contrary this defendant avers the fact to be that on the date aforesaid, said premises were in first class condition, ordinary wear and tear excepted, and in every way suitable for the conduct therein of a first class hotel business.

She further avers that she had no trouble in leasing said premises in the condition they were then in to J. Barton Key, who desired to use same in the conduct of a first class hotel business. She denies that on the date aforesaid, or at any date subsequent thereto, she did remodel, refit, renovate or repair said premises, or even agree to do so in any degree whatever.

She further denies that in the leasing of said premises to J. Barton Key the condition of said premises as to repair, bore any part
94 or consideration in the agreement between her and said Key as to the amount of rent to be paid by said Key for the use of said premises.

IV. This defendant admits that on the 5th day of November, A. D., 1900, by Henry May, her attorney in fact, she entered into a lease with said J. Barton Key for the rental by him of said premises for the term of five (5) years commencing on the first day of November, 1900, and terminating on the first day of November, 1905, said lease reserving therein the rental or sum of Thirty-seven Thousand Five Hundred Dollars ($37,500.00) to be paid by said lessee for the term of said lease, payable in monthly instalments of Six Hundred and Twenty-five Dollars ($625.00) in advance on the first day of each and every month during the continuance of said lease. All of which will more fully and at large appear by reference to said lease, a copy of which is filed herewith marked Defendant's Exhibit No. 1, which said lease, or the copy thereof, is prayed to be read and considered as part hereof.

This defendant further avers that said lease was never recorded among the Land Records of the District of Columbia, or any where else, but after the execution thereof, remained in the private possession of the attorney in fact of this defendant, or her agent J. V. N. Huyck; and she is advised and believes that neither did the said attorney in fact, nor said agent, nor said Key at any time communicate the terms thereof to the Complainants or any of the other defendants to this cause; and this defendant is informed and believes and therefore avers and charges, that whatever work was done or materials furnished by said Complainants or the other de-
95 fendants herein, under contract with said Key, was done and furnished upon the personal responsibility of said Key and in entire ignorance by them of the terms and provisions of said lease.

Further answering said paragraph four of said Bill, this defendant denies that "the bad condition and want of repair" of said premises entered into the matter of said lease or the negotiation therefor. She is informed and believes, and therefore avers the fact to be that there was no agreement between this defendant, or her attorney in fact, and said J. Barton Key, that the lessor should be in any way responsible, or liable, to the extent of Five Thousand Dollars ($5,000.00), or any other sum whatever, for the improvements, alterations or repairs, which might be made upon said premises by said lessee, but on the contrary, that no such matter was brought up for consideration in connection with the negotiation for said lease, and at no time, either prior to the signing of said lease, or subsequent thereto, was it ever contemplated or agreed between the parties to said lease, that this defendant should be in any way bound or liable for the acts of said lessee in the matter of repairs or improvements to be made on said premises.

This defendant avers that the clause in said lease which is referred to in the fourth paragraph of said Bill, does not bear out or justify the allegations contained in said paragraph, but relates to such ex-

traordinary alterations and repairs, which the lessee was at liberty to make or not as he might elect, but which, if made with
96 the written consent of the lessor first had and obtained and approved by the lessor and should equal in value the sum of Five Thousand Dollars ($5,000.00), would entitle the lessee to a deduction from the amount of the rent for said term, of Five Thousand Dollars ($5,000.00); it being understood, however, that if said deduction was made, it should be credited on the amount of the rental for said premises at the rate of One Thousand Dollars ($1,000.00) per year and that any extraordinary repairs or alterations in excess of Five Thousand Dollars ($5,000.00) should be paid for by the lessee; that the clause of said lease referred to read as follows:—

"Fifth. That no change shall be made in the construction of said building, or in alterations of partitions or stairways without the written consent of the lessor first had and obtained, but the said lessee may, with the written consent of said lessor, make improvements, alterations and extraordinary repairs, and if such improvements, alterations and repairs during the period of this lease equal the sum of five thousand dollars, and are approved by the lessor, the said sum of five thousand dollars will be deducted from the amount of rent paid for said term, it being understood, however, and by this agreement provided, that only one thousand dollars shall be deducted during any one year of said tenancy. All such improvements, repairs and alterations in excess of said five thousand
97 dollars made during the term of said lease shall be made and paid for by the said lessee;" that said provision was based upon the fulfillment by said lessee of his agreement in its entirety, the desire to have a permanent tenant being a moving consideration for the credit to be allowed said lessee referred to in said paragraph of the lease. This defendant avers, however, that said Key not only did not keep, or perform, the conditions of said lease, on his part to be kept and performed, but that he did not obtain her consent in writing, or otherwise, to make any extraordinary repairs or improvements on said premises, and he paid rent for said premises only up to and including December, 1900. That on February 5, 1901, said premises were taken possession of by Receivers appointed by this Court in the case of James P. Scott against J. Barton Key, Equity No. 22,044; that said Receivers closed said hotel on March 20, 1901, under order of this Court, and on April 22, 1901, reported to the Court sale of all the goods, chattels and personal property of said Key located upon said premises. Said sale was ratified by the Court on May 14, 1901, and said Receivers ordered to turn over said premises to this defendant on June 3, 1901. That by reason of the failure of said Key this defendant not only lost a permanent tenant, and the rent of said premises for more than seven (7) months, but she was called upon to expend large sums of money in the employment of counsel to protect her interest in the several contests before the Court between the said Key and his creditors.

98 V, VI and VII. Answering paragraphs fifth, sixth and seventh of said Bill, this defendant says she has no knowl-

edge of the execution of a contract between Complainants and said J. Barton Key, or of the provisions thereof, and in so far as the same may be material, calls for strict proof thereof. She denies all the other allegations in said paragraph contained.

Further answering said paragraphs, this defendant denies that said J. Barton Key was ever authorized or directed, or as a matter of fact, did, enter into contract of any character with the Complainants, or any of the other defendants, as her agent, or on her behalf, and she denies that any such contracts were, in fact, ever executed. She avers that neither by the terms of said lease, nor by authority of the negotiations with her attorney in fact for said lease, was there ever any understanding or agreement between the parties thereto that said Key should in any wise be the agent of this defendant, but on the contrary it was distinctly understood and agreed between said parties that the only relation which should arise between the parties was that of lessor and lessee.

She denies that she ever paid the Complainants, or any of them, any sum whatever on account of their said contract, or that the said Key paid said sums as her agent, or on her behalf, and she avers that whatever payments were made by said Key to Complainants were made entirely with his own money and on his own behalf and were so received and credited by the said Complainants.

99 VIII. Answering paragraph eight of said bill this defendant says she has no knowledge as to the work performed on said premises by said Complainants, or any of them, or the value thereof and calls for strict proof of said allegation. She avers that after the execution of the lease aforesaid the said Key was put in possession of said premises and he remained in the exclusive possession thereof until the Receivers appointed by this Court in said Equity Cause No. 22,044 took possession of said premises, and this defendant never had any knowledge either directly or indirectly as to the character or extent of the repairs being made by said lessee.

She admits that said lessee made application to her agent for leave to make certain extraordinary repairs and improvements, which application was denied. She denies that the work done on said premises by the Complainants was ever accepted by her, or by her agent for, or on her behalf; and she denies that said Key was ever authorized to make such repairs as her agent, or to accept the work when completed, as her agent or on her behalf, or that he did as a matter of fact, anything in the premises as her agent. On the contrary she avers that Complainants contracted with said Key solely upon his individual responsibility, and the whole course of their business was conducted with said Key in his individual capacity and not as representing this defendant or any one else.

100 Further answering this paragraph this defendant denies that she has been in possession of said premises since the 19th day of January, 1901, and receiving large gains, incomes and profits therefrom. On the contrary, she avers that the record in said Equity cause No. 22,044, shows that the Receivers appointed by this Court, took possession of said premises under order of Court passed February 5, 1901, and said premises were turned over to this de-

fendant by order passed June 3, 1901. The report further shows that this defendant has received no rent or income whatever from said property since the first day of January, 1901, and that in the distribution of the funds in the hands of said Receiver she is credited on account of said rent with the sum of Nine Hundred and Thirty-five Dollars and ninety-one cents ($935.91). She denies that said premises have been greatly enhanced in value, or that she has received, and is still receiving large incomes, gains and profits by reason of the improvements made upon said premises by the Complainants, or the other defendants hereto.

IX and X. This defendant can neither admit nor deny the allegations of paragraph nine and ten of said Bill as to the amount due Complainants from J. Barton Key and the filing of mechanics' liens by said Complainants, but in so far as same may be material, calls for strict proof thereof. She denies that there ever was, or is now, any amount whatever, due from her to the Complainants, or any of them, or that there ever was any contract, of any kind, existing between the Complainants, or any of them, and herself.

XI. This defendant has no knowledge of the filing of
101 notices of liens against the leasehold interest of said Key in said premises as set forth in paragraph eleven of said Bill and she calls for strict proof thereof. She denies that said lease was in full force and effect either on the 15th day of February, 1901, or during the month of July, 1901. On the contrary the terms of said lease were violated by said Key on the first day of January, 1901, when he defaulted in the payment of rent, and thereafter the operation of said lease and the rights of the landlord thereunder, were suspended by the action of this Court in appointing Receivers to take charge of said property, as is more fully set out in paragraph four of this Answer. That under the direction of this Court all the right, title and interest of said Key in said premises was sold at public auction, and said Receivers ordered to put this defendant in possession thereof. This defendant is advised that by reason of the several orders of the Court passed in said case of Scott *vs.* Key, Equity 22,044 all title and interest of said Key under said lease has ceased and determined by operation of law, by virtue of said several orders, and whatever liens Complainants may have had against the leasehold interest of said Key have become nugatory and their rights thereunder transferred to the funds in the hands of the Receivers. That many of said lienors recognizing such to be the law, have filed their claims before the Auditor, asking that they be allowed the amounts due them out of said funds.

Further answering paragraph eleven of said Bill, this defendant
denies that she re-entered and took possession of said prem-
102 ises with the consent of said Key, and she denies that subsequent to said re-entry did she lease said premises to a person or persons acting in behalf of said Key, or that he is now in the possession and control thereof. She avers the fact to be that said premises are under lease to a corporation, incorporated under the laws of the State of New Jersey, and that said Key is not known in

the transaction at all, and so far as this defendant is concerned, has nothing whatever to do with the matter.

XII. This defendant denies each and every of the allegations contained in paragraph twelve of said Bill, and calls for strict proof thereof.

And having fully answered she prays to be hence dismissed with her reasonable costs.

CECILIA C. D'AUIDGNE,
By HAMILTON & COLBERT,
Her Solicitors.

Oath and personal signature waived.
J. MILLER KENYON AND
THOS. B. HUYCK,
Per KENYON.

Joinder of Issue.

Filed May 13, 1902.

In the Supreme Court of the District of Columbia.

Equity. No. 23143.

JAMES LINSKEY ET AL.
vs.
CECILIA C. D'AUDIGNA.

The complainants, James Linskey *et al.*, hereby join issue
103 with the defendant, Cecilia C. d'Audigna, formerly called Cecilia C. May, upon her answer filed in the above-entitled matter.

THOS. B. HUYCK AND
J. MILLER KENYON,
Attorneys for Complainants.

Order Consolidating No. 23,143 *with* No. 22,963, *Equity.*

Filed February 15, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 23143, Doc. 52.

JAMES LINSKEY ET AL., Complainants,
vs.
CECILIA C. D'AUDIGNA ET AL., Defendants.

Upon application in that behalf made herein, and in pursuance to section 1246 of the Code of Law for the District of Columbia, it is by the Court this 15th day of February, A. D. 1906,

Ordered that the above entitled equity cause be, and the same hereby is, consolidated with Equity Cause No. 22963, now pending in the above entitled Court wherein Charles A. Langley is complainant and the said Cecilia C. d'Audigna and others are defendants.

WENDELL P. STAFFORD, *Justice.*

104 *Testimony on Behalf of Complainant.*

Filed Oct. 16, 1906.

In the Supreme Court of the District of Columbia.

In Equity. No. 22963.

CHARLES A. LANGLEY
vs.
CECELIA C. D'ANDIGNA ET AL.

WASHINGTON, D. C., *February* 17, 1906—10:30 o'clock a. m.

Met pursuant to notice at the office of A. A. Hoehling, Jr., Kellogg Building, Washington, D. C.

Present on behalf of the complainant, Mr. Hoehling.

Present on behalf of the defendant No. 1, Mr. John J. Hamilton.

Present on behalf of defendant No. 2, Mr. Edward C. Dutton.

Present on behalf of defendant No. 3, Mackall, Maedel and Loving.

Present on behalf of defendants Nos. 4, 5, 6 and 7 and on behalf of the defendant William H. McCuen, in his individual capacity, Tucker and Kenyon, and E. S. Bailey.

Present on behalf of defendants Nos. 9 and 10, Charles A. Muddiman, in person.

Mr. HOEHLING: I offer in evidence, on behalf of the complainant, a copy of a lease attached to the answer of defendant No. 1 and therein marked Exhibit No. 1.

I also offer in evidence a copy of mechanic's lien, numbered 4841, filed by the complainant Charles A. Langley, and attached to
105 the bill of complaint in this case as Exhibit B, filed February 5th, 1901, at 2:40 o'clock, p. m.

CHARLES A. LANGLEY, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined:

By Mr. HOEHLING:

Q. State your full name? A. Charles A. Langley.

Q. Where do you reside? A. I reside on the Blair road, in the District. My place of business is No. 310 12th Street, northwest, in this city.

Q. Are you the same Charles A. Langley who filed the mechanic's lien to which I have just referred, and who also filed the bill of complaint in Equity cause No. 22,963? A. I am.

Q. What is your occupation? A. I am a general contractor and builder.

Q. How long have you been engaged in that business? A. Since the spring of 1879.

Q. Have you been actively engaged in that business, continuously, since that time? A. I have.

Q. Please look at the bill of complaint which I hand you, the caption of which contains a list of names of the several defendants in this case, and state whether or not you are acquainted with those defendants, and also whether or not they reside in the District of Columbia; and if any of them do not, state which do not.

106 A. I will state that I know personally a portion of these defendants, but not all. I know Mr. James Lockhead, William H. McEwen, George R. Herbert and Charles A. Muddiman. Those are the only persons in that list I am personally acquainted with.

Q. Do you know of the other defendants, if you do not know them personally? A. I cannot say that I do. I think Mr. Linskey is a painter. I have heard of him but I am not personally acquainted with him. I know of the firm of Catlin; but I am not personally acquainted with them.

Q. State whether or not any of these various defendants are located in the District of Columbia and doing business here? A. So far as I know, they are.

Q. The mechanic's lien to which I have referred, and the bill of complaint in this case, refer to certain work done by you in and upon the property known in this case as the Hotel Barton. Please state by whom you were sent for in connection with the doing of that work, and about when it was. A. I do not know that I can recall the date exactly; but it was in the fall of the year. I think the bill states about the date. It was in 1900 and it was in the fall of 1900. May I state about my first meeting with Barton Key.

Q. State just what took place. A. I will state that I was at work for Major T. B. Ferguson, at No. 734 Fifteenth Street directly opposite the Hotel Barton. One day Major Ferguson and myself were in front of his premises and Barton Key came along. Major Ferguson introduced me to Mr. Key and said——

107 Mr. HAMILTON: I object to the witness testifying what Major Ferguson said.

The WITNESS: Major Ferguson introduced me to Mr. Key.

By Mr. HOEHLING:

Q. Were you advised, in that conversation, that Mr. Key had any connection with the hotel property across the street? A. Yes.

Q. Was that statement made to you in the presence of Mr. Key? A. Mr. Key made that statement himself.

Q. State what he said. A. Mr. Key said that he had leased this property and was going to make improvements; that he had also talked with an architect, who was in Mr. Ferguson's building, a Mr. Keferstein; and said that he would like to talk with me with reference to this work. He said that he would have his plans in a few days, which he did. In the meantime I met Mr. Key, and went

over, generally, what he proposed to do. Then a fe*t* days later, when the sketches by Mr. Keferstein were ready, I went to the Hotel Barton building and went over the work that was embodied in his first plans, in a general way, and from them gave Mr. Key an approximate idea of the cost of what he intimated to me at that time he desired to do, which, in the main, was the changing of the main entrance of the building. The approach to the building was then up a number of stone steps leading from the pavement to the main floor of the building, and it was proposed to take them away and change the entrance, by lowering it to nearly the level of the pavement. I think there may be one or two steps up from the pavement to
108 the inner entrance. From that point, which was made a vestibule, the steps ascended to the main floor, to the office. That portion of the house was very much changed in the way of rearrangement of the office and the lobby of the hotel. I cannot describe in detail, perhaps, so completely as to the exact nature of that work as my foreman, Mr. Stevens, will do later; but that was, in general, the character of the work. There was a large fire place built there which contained considerable brickwork, owing to the fact that the foundation had to be brought up from the ground level below, and a concrete foundation placed under it.

A number of openings were cut through the brick walls and other openings walled up. At the main entrance the main entrance had to be shored up, and iron beams put in. There were also iron beams and an iron column put in at the office, in order to make the changes desired. There was also considerable work done in the basement of the building, in the way of changing openings. Some openings were cut through and others walled up. The bar was changed from the south side of the basement to the north side, and a portion of the bar was made and placed by us, thus enlarging what was formerly there. There was considerable plastering that was necessary in the remodelling process. Quite a large amount of stair work had to be done on the stairs leading up from the vestibule to the hotel lobby.

On the southwest corner of the building we put in a window. There was considerable glazing done in connection with what was done there. There was more or less mill work furnished, that is, doors, trim, etc.

109 There is a charge in my bill for a lot of sign work, which appears there on the front of the building. There was more or less small fitting up and work that I could not just describe, but such work as would come generally in the way of such alterations. That was carpenter's work.

At the beginning of this work it was to have been confined principally to that entrance, and there was very much less work to be done in the lobby and about the office than there was really done before we got through. In fact, we started in there to do about a thousand dollars' worth of work; but before we got through the bill ran up to the amount I have rendered here. I can say that this work was done on a percentage basis. As I have stated, I gave Mr. Key a general approximate estimate of such work as he described in the beginning; but one thing led to another, and I kept on doing work until it

amounted to the amount of this bill. I kept the net cost of everything, in all branches, carpenter's work and everything else, and to that is added 10 per cent. for my services as superintendent and for the management of the work. In all cases where the work was of importance and was shown, so that I could obtain competitive estimates on it, I did so; and I presume that in many of these sub-estimates we started out——

Mr. HAMILTON: I object to the witness testifying what his presumption is.

By Mr. HOEHLING:

Q. State the facts. A. I know that in some cases we started in on the work with a contract; but as it was found necessary to
110 do more in these branches of work, it was ordered by me to be done by day's work, the contractors charging it up at the regular prevailing prices.

Q. Was there any tiling or cement work done in connection with what you have stated? A. Yes; there was tiling done there. I think the vestibule was tiled and, as I recollect it, there was some concrete or cement work done for the foundations of that chimney to which I referred.

Q. What was the general condition of that property immediately preceding the making of these alterations and repairs about which you have spoken, particularly in reference to the utility of the building, as it then stood, to advantageous use as a hotel?

Mr. HAMILTON: I object to that unless it is shown that this witness has some special knowledge as to how buildings should be constructed for the purpose of carrying on the hotel business. I object on the ground that the testimony is incompetent.

A. The entrance to this building seemed very inappropriate for a hotel. It was narrow, and it was necessary to ascend this unusual number of stone steps leading up from the pavement. The office and the room around it was not suitable, because it was contracted and small. It was dark. It was not well lighted. The building was out of repair in general. Of course there was a great deal of work that was done there which I had nothing to do with, towards putting the building in proper condition. The plumbing was in very bad shape. Mr. Lockhead can describe that in detail. He over-
111 hauled all of the plumbing. The painting and decoration was all done by other parties.

Q. Prior to the doing of this work what statement, if any, did Mr. Key make to you in respect to the matter of his authority to have the work done?

Mr. HAMILTON: I object to any such testimony if it is an attempt to bind the defendant Madam d'Andigne by any such statement. I further object on the ground that the testimony is incompetent for the purpose of proving agency.

A. I may state in reference to that that Mr. Key, the party leasing this property, stated to me the nature of the lease for that building;

the principal part of it was that he was allowed $5,000 in the way of improvements, to be paid by the owner at the rate of $1,000 per year, to be deducted from the rental of the building. He told me pretty much in full as to the terms of his lease; but that part, of course, was the part that interested me. I think he told me the terms of his lease, and so forth. I know we discussed his lease before I even started to do anything.

Q. In that conversation, did he tell you who was the rental agent for the property? A. He told me, and I was also familiar with that fact.

Q. Who was it? A. Mr. J. V. N. Huyck.

Q. State whether or not, prior to doing this work, you made an application to Mr. Huyck in respect to the terms of the lease covering the matter of the improvements on the property. A. I called on Mr. Huyck in reference to the lease, and he told me——

112 Mr. HAMILTON: I object to any statement by this witness as to any conversation with Mr. Huyck, until it is proven that Mr. Huyck was the agent of the defendant Madam d'Andigne and authorized to make such statement.

A. I will state that I called on Mr. Huyck. I knew Mr. Huyck and have known him personally for years. I asked him the nature of the lease. He practically verified identically what Barton Key had told me.

Q. State, as near as you can recall, just what Mr. Huyck said to you as to the lease, so far as it covers the matter of improvement upon the hotel.

Mr. HAMILTON: I make the same objection.

A. It was to the effect that the lease allowed the party leasing, Mr. Key, the right and privilege of spending $5,000 upon the property in the way of the improvements, which the owner allowed him to take at the rate of $1,000 per year out of the rent of the building.

Q. Where was Mr. Huyck's office with reference to the location of the Hotel Barton property? A. It is at the same place where it has been for years. It is on Pennsylvania Avenue just west of the Riggs bank, in the basement.

Q. How near the Hotel Barton property? A. About half a square.

Q. Did you see Mr. Huyck around the premises of the Hotel Barton, during the time you were doing this work about which you have testified? A. I have seen him there. I do not know that I have ever seen him in the building, but I have seen him passing back and forth. I used to see Mr. Huyck very often. I do
113 not think he took that interest to go in and personally inspect the work; but he had a general look on, and I often saw him passing back and forth.

Q. Did you see him there during the time you were doing the work? A. I saw him several times—a number of times.

Q. You have stated that you did all this work on a percentage basis, that is to say, you charged the actual cost of doing the work,

to which you added ten per cent. for supervision, and upon the completion of the work you rendered a statement of account. What evidence accompanied that statement of account as to the amount of the bills and their payment by you? A. I rendered a statement, of which this is a duplicate, so far as the statement goes (referring to paper marked complainant's exhibit No. 3). Accompanying that statement, which was the original and was rendered to Mr. Barton Key, were the various bills of the different parties performing work for me on that building. All of those voucher bills were itemized accounts and all were receipted bills, before presenting them.

Q. They were turned over to Mr. Key? A. They were turned over to Mr. Key.

Q. If that is so, I assume that you no longer have in your possession the receipted vouchers covering these individual amounts. A. I have not.

Q. I wish you would examine this paper I now hand you,
114 marked Complainant's Exhibit No. 3, which purports to be a duplicate copy of that statement, and go through these several items and state whether or not you actually paid the amounts set forth as to each one of your sub-contractors in that list, and whether that is a correct statement of the aggregate of your claim. A. I would say that it is a correct account, knowing that I rendered it as such at the time, and that it was very carefully gone over. That is, all the various bills accompanying it, which were rendered as voucher bills, were all very carefully gone into before rendering the account. In looking over these general items I find the item of brick work. That, of course, was work that came in connection with the main entrance and the change of openings there, and also brick work in connection with the large fire place we put in, the cutting out of brick openings, and the enlargement of the entrance about the office, where we put in iron beams, and walled up various openings, and so forth.

This charge for stone work comes in connection with the changes made at that entrance. The stone that was there was taken away and additional stone added in a different form, as it appears there at the building now. Then there are two charges for iron work. Some was gotten from Mr. Joiss and some from Mr. McGill, all of which was used in connection with the front entrance and the openings on the interior.

The galvanized iron work came in at that front entrance.

The plastering, which I spoke of before, comes in connection with the alterations we made about the office and the hotel lobby.

There was mill work, which was bought from Mr. Crupper and Mr. Dyer.

115 Here is an item about the stairs I spoke of, and an item for glass. That does not amount to very much. It is only $68.40. Probably the largest portion of that went into the window I mentioned.

The tiling was done by Mr. Hutchinson, and was for the vestibule.

Here is another charge for millwork. We seemingly got some

mill work from Mr. Dyer, amounting to $119.65. Of course I cannot place just where all of this went.

They had some painting done there, and there is a charge by Mr. Miller of $125.57.

There is a charge here for brass railing. I think that brass railing is just inside of these steps leading up from the vestibule to the office level.

Most of the signs charged for appear on the front of the building now.

Q. These items, as I understand you, represent the work which you caused to be done by people you employed, and payments were made to them by you. A. By me; yes, sir.

Q. What was the aggregate of those payments? A. The aggregate of those payments, excluding my own ten per cent., is $3,428.38. To that is added 10 per cent. of the net cost, amounting to $342.84, making a total bill of $3,771.22.

Q. I notice there is an item of that bill of carpenter's work for $743.19. Who did that? A. That was done by my carpenters, under a foreman carpenter, who was superintending it for me.

116 Q. Who prepared this statement? A. My book-keeper, Mr. Smith.

Q. Is he present? A. Yes, sir; he is sitting here now.

Q. This bill is dated January, 1901. Do you recall what part of January the bill was rendered? The date does not seem to be given. A. I cannot tell you just the day of the month when it was rendered.

Q. Have you ever been paid any part of that bill? A. Nothing whatever.

Mr. HOEHLING: I now offer in evidence this statement marked Complainant's Exhibit No. 3, and will prove the handwriting of it as being that of Mr. Smith, the book-keeper, who is here present.

The above mentioned paper is filed herewith, marked complainant's exhibit No. 3.

Mr. HAMILTON: I do not require proof of handwriting, but I think the account should be proved in the proper way.

Cross-examination.

By Mr. HAMILTON:

Q. You did not keep these books, did you? A. No, sir.

Q. Your only knowledge as to the items in these bills is what appears from your books, which are kept by an employee of yours? A. No; that is not my only knowledge of the bills. All bills, before going to my customers, and the people for whom I do work, are carefully examined by me.

117 Q. Did you have any written contract with Mr. Key for the work that you did at the hotel? A. No, I did not.

Q. You said that you gave him an estimate. Was that estimate in writing? A. The approximate estimate I gave him, which was not a binding one, was for the purpose of giving him a general idea of

the cost, and I do not think it was in writing. I think it was a verbal estimate.

Q. What action was taken on that estimate? Did Mr. Key authorize you to go ahead and do the work. A. He authorized me to go ahead and do the work on the basis of charging him ten per cent. over and above the net cost.

Q. He agreed to the charge being made in that manner? A. That was agreed to between us.

Q. Can you state how much that estimate amounted to? A. The approximate estimate that I made him?

Q. Yes. A. As near as I can recollect, as I have said before, what was intended to be done under the approximate estimate was about $1,000.

Q. How did that amount come to be increased afterwards? A. By reason of the very much greater quantity of work which Mr. Key wished done and had done.

Q. You mean that after he had started to make the changes that you and he had agreed upon, he found other work he wanted done, and authorized you to go ahead and do it? A. Yes, he did.

Q. Did you have any written contract with him for that work? A. No.

118 Q. Simply his verbal authorization? A. That is all.

Q. Was any statement made to you, or any investigation made by you, as to how Mr. Key expected to pay for this additional work, at the time the orders were given you to do the extra work? A. No; there was no talk of the additional work. Both of us knew, and it was understood and talked over, that we were doing a great deal more than was expected and talked of in the first place.

Q. And other than the conversation which you had concerning this lease, and which you have testified took place before you were employed at all to do this work, you had no other conversation with him or any one else with regard to the provision of the lease permitting repairs; did you? A. Not excepting with Mr. Key and Mr. Huyck.

Q. Those are the conversations you have testified to, which took place before you began work? A. Yes.

Q. You had no other conversations than those? A. No. I think it is proper to say that in the conversation a description of——

Q. At the time you had this conversation with Mr. Key, in which you say he informed you that under his lease he had a right to make repairs, did you see a copy of the lease? A. I do not think I did.

Q. Did you, as a matter of fact, ever see it before the filing of this suit? A. I don't think I did.

119 Q. Did you demand to see a copy of the lease of Mr. Key or Mr. Huyck? A. I don't think I did, but it is possible that Mr. Huyck may have shown me the lease. Of course it is now six years ago, and I would not swear to it.

Q. You did not mean to say that he did show it to you? A. I do not mean to say that he did, and I do not mean to say that he did not.

Q. You simply do not remember whether he did or not. A. I

don't remember whether he did or not. I know I went to see Mr. Huyck about it.

Q. You were advised, however, by Mr. Key that he was authorized to make repairs to the extent of $5,000, which would be deducted from his rent at the rate of $1,000 a year? A. Yes; that is what I was told.

Q. And you afterwards verified that statement by your conversation with Mr. Huyck? A. Yes, sir.

Q. Did you not know, at that time, that the lease provided that no repairs of any permanent nature should be made by the tenant, without the consent in writing first had and obtained from the owner? A. I do not think that I was informed of that particular phrase of the lease.

Q. You did not expect to be paid out of the credit that would be made to Mr. Key on the rent? A. I did not expect to wait for my payment to get it in that way.

Q. You expected Mr. Key to pay you for the work when
120 it was done? A. Yes.

Q. Notwithstanding the lease provided he would be entitled to a credit on the rent of a thousand dollars a year for five years? A. Yes; I expected him to pay me. Of course that part of the lease I thought was important.

Q. Why was it important to you? A. It was important because there was probably a chance to hold that, in case there was any trouble about the payment.

Q. You thought that possibly, if Mr. Key should fail to pay you, you might have a chance to look to the lease or to the property? A. Yes; or to the property. It was only a business *b*ookout.

Q. But you were expecting to be paid by Mr. Key himself, when the work was completed? A. I expected he would pay me; yes.

Q. And it was on that understanding you started to do this work, and it was on that understanding that you continued to do the work until it was completed? A. I may say so; yes.

Q. In your direct examination you said you saw Mr. Huyck, whom you knew to be the agent of the owner, passing back and forth. What do you mean by that? A. I mean this: That I saw him pass back and forth on the street, his office being near, and I supposed he took a casual interest to see what was going on.

Q. You did not mean to say in response, to Mr. Hoehling's question, that you saw Mr. Huyck in the building? A. I said that I
did not think that he took that much interest in it, or that I
121 saw him in the building; but that I saw him passing back and forth.

Q. Did you not known, as a matter of fact, that Mr. Huyck never was in the building while any repairs were being made? A. I do not know that. I do not recollect seeing him; but I do not know that he was not there.

Q. By passing back and forth you mean that you saw him on the street, passing to and fro from his office? A. Yes; and he took a look, in a casual way, of what was going on, which would be quite natural.

Q. You mean as he was passing by the building? A. Yes; and I think he stopped on more than one occasion and talked as to what was doing. We were working right on the front, and I am quite certain that he did, on more than one occasion, stop there.

Q. Did he talk to you? A. Yes.

Q. You knew that this building had been used for hotel purposes for a great many years prior to the date when you began to make the alterations; did you not? A. Yes.

Q. And before the alterations were made the entrance to the office was by means of a flight of steps on the outside of the building? A. Yes.

Q. The alterations made by you removed these steps and made the entrance to the office floor on the inside of the building? A. That is right.

122 Q. Who was Mr. Key's architect for this work? A. Mr. Kefferstein was the architect, so far as the work at the immediate front was concerned. A large portion of the work on the inside required no architect, and was worked out, in general, by my superintendent, myself and Mr. Key as the work progressed, as things seemed to be necessary.

Q. Did Mr. Kefferstein furnish you with plans for the change of front? A. He did.

Q. Did you make the changes according to those plans? A. Yes.

Q. You say that the principal part of the repair work was done in changing the front and in the re-arrangement of the office? A. Yes; and in the re-arrangement of the office and lobby immediately adjoining, which was very much enlarged from what was first intended.

Q. At whose suggestion? A. At the suggestion of Mr. Key.

Q. I believe you also testified that in the basement the bar was changed from the south side of the building to the north side? A. Yes.

Q. And a window put in? A. On the south corner of the building. That is shown there now.

Q. That was for the purpose of giving more light to the basement? A. A room on the south side was fitted up as a sort of a smoking room and place for patrons of the house, and, perhaps, of the bar, to sit in.

123 Q. There were already windows in the south side of the basement; were there not? A. I am not sure whether there were or not.

Q. Does not the south side of the building face on an alley? A. I think it does.

Q. Did you have any plastering done there? A. I did.

Q. Is that included in your bill? A. It is.

Q. Who was the plasterer? A. Thomas E. Landon.

Q. This stairway work that you speak of was on the stair made necessary by the change to the entrance to the building? A. Yes, sir.

Q. From the outside to the inside. A. Yes, sir.

Q. Was that a part of your original contract with Mr. Key? A. Yes; there was to be a stairway; but I think there was quite a con-

siderable extra work done in carrying it out, as he afterwards had it done, in the way of railing, etc., from the adjoining room, looking over into this stairway. That is as nearly as I can carry it in my mind. Of course it has been about six years ago and I have not been able to go into the building recently. I have not been in there since the time my bill was presented.

Q. As I understand you, your original estimate for this change of entrance to the office was about $1000, and after you started the work, at the suggestion of Mr. Key, you enlarged upon those plans,
124 and included other work, which ran your bill up to the amount of your lien? A. That is right.

Q. You had no special contract with Mr. Key for the enlargement of your original estimate? A. No.

Q. You simply increased the amount of work by a verbal arrangement with him? A. That is right.

Q. And is it not a fact that the only work you did on the building was work rendered necessary in order to make the changes suggested by Mr. Key? A. I cannot say that. The work that we did, was work, of course, done according to Mr. Key's suggestions, which were all in the nature of adding a decided improvement to the building, for the purposes for which he intended to use it.

Q. That is to say, it added to the appearance of the hotel? A. It added very much to it. I have often said that the change made right at the immediate entrance was worth $5,000 to the building.

Q. You mean in appearance? A. Not only in appearance, but for the general purposes of a hotel and to anyone who desired to use it for that purpose.

Q. My question was whether or not the work that you did was rendered necessary in order to effect the changes that were desired? A. That is right.

Q. You said something about putting in iron beams, which were necessary to carry out the changes. A. Most undoubtedly
125 they were necessary. Where openings were enlarged and a large opening made it is necessary to put in iron beams to carry the weight above. At the front entrance we had quite a complicated piece of work in order to sustain the weight above.

Q. In changing, to some extent, the walls of the structure you had to make provisions to suspend the weight that was on those walls? A. We always do that. No careful builder would cut a wall until he had ascertained whether it was safe.

Q. All of your negotiations with regard to the changes to be made and the cost of those changes, were had with Mr. Key; were they not? A. Yes.

Q. And you understood you were making those repairs for him? A. Yes.

Q. Did you file this lien yourself, on February 5th, 1901? A. My counsel, Mr. Hoehling, filed it.

Q. Did you give any notice of the lien to Mr. Key, other than the filing of the lien in the Clerk's office?

Mr. HOEHLING: I object to that as being incompetent, immaterial and irrelevant.

A. I do not recollect that.

Q. Did you give any notice to Madam d'Andigne, the owner of the building?

Mr. HOEHLING: I object to that on the same grounds.

A. No.

Q. Did you give any notice to Mr. Huyck, whom you say was her agent?

Mr. HOEHLING: I object on the same ground.

126 A. I cannot say that I did. I had a number of conversations with Mr. Huyck in reference to this matter; and I think it is more than likely that I did.

Q. My question is whether you gave him any written notice of the filing of this lien by you? A. I doubt if I did.

Q. You said, in your direct examination, something about it being necessary, on account of the changes you made there, to shore up the front wall? A. Yes.

Q. Why was that necessary? A. It was necessary to suspend that weight by shoring, until we got up our iron beams and could throw all the weight down on them.

Q. After you put in your iron beams, which you have testified about, your shoring was removed? A. Yes, sir; the shoring was removed.

Q. Your lien was filed on February 5th, 1901. Can you state when you finished your work on the improvements? A. I cannot state from memory.

Q. Can you approximate it?

Mr. HOEHLING: I would suggest that if Mr. Langley can get that accurately I would rather have him do that than guess at it.

By Mr. HAMILTON:

Q. Give me your best recollection about it. A. I would say that it was somewhere in the beginning of the year 1901.

Q. Was Mr. Key in the building at that time, running it as a hotel? A. Yes.

127 Q. Was he running the place as a hotel on February 5th, 1901, before you filed your lien? A. He was.

Q. Did you know that proceedings were begun against him by some of his creditors about that time, and that a receiver was appointed to take charge of the hotel? A. I do not recollect that or just when it was. I know there was some trouble there; but I thought it was much later; I thought Mr. Key ran that place for the best part of a year.

Q. You know, at all events, that Mr. Key did get into trouble and that receivers were appointed to take charge of the hotel? A. Yes, sir; I knew that.

Q. And thereafter sold out Mr. Key's interest in the hotel? A. They made some disposition of it; but I don't know exactly what it was.

Q. Were you not present at the public auction that took place of Mr. Key's furniture and other interests in the hotel? A. No.

Q. You saw it advertised; did you not? A. I presume I did.

Q. You knew that it was going to be sold? A. I knew that it was going to be sold; yes.

Q. Do you know where Mr. Key is now? A. I do not.

Q. Has he been in possession of the hotel at any time since February, 1901? A. I should suppose not.

128 Cross-examination.

Mr. BAILEY:

Q. You stated in your direct examination that before beginning work, and when you first began to talk about the alterations and repairs to be made there, Mr. Key told you of the provision in the lease whereby $5,000 would be allowed for repairs that should be made. You afterwards stated that before beginning work you went to see Mr. Huyck for the purpose of verifying that. Why did you go to see Mr. Huyck for that purpose? A. Mr. Key was a stranger to me up to the time I was introduced to him just previous to doing this work. Mr. Huyck was an old-time acquaintance of mine, and was located very close to where my operations were, and I thought it was of interest enough to call on Mr. Huyck and talk with him with reference to it.

Q. You knew then that Mr. Huyck was the agent for the building? A. I knew that he had been the agent for a long time.

Q. Do you remember that, in that conversation, Mr. Huyck told you of the fact that Mr. Key desired you to do the work of making the alterations? A. Yes.

Q. Did you tell him the extent of the alterations? A. Yes, I probably did.

Q. That was before you actually began work? A. It was before I began work.

Q. Did the alterations and repairs made upon the building enhance the value of the property for the purpose for which it
129 was used in the hotel business? A. I think most decidedly so.

Mr. HAMILTON: I object to this line of examination as irrelevant and immaterial, so far as Mr. Bailey's clients are concerned.

Further cross-examination.

By Mr. HAMILTON:

Q. You say that you probably told Mr. Huyck what you expected to do for Mr. Key? Are you able to swear positively whether you did or not? A. I cannot say that I am; but it would be quite natural that I should.

Q. Do you simply assume that, because it would have been a natural thing for you to do? A. Yes; I think so.

Q. You knew that Mr. Huyck had nothing to do with making the repairs? A. I knew that he had made the lease for the building, and that he had collected the rents for the owner.

Q. Your purpose in seeing him was to verify Mr. Key's statement as to his being permitted to take from the rents, during the term of the lease, the sum of $5,000? A. Yes.

Q. Don't you know that Mr. Huyck, at that interview, advised you that Mr. Key had not authority to make any repairs, unless he had the written consent of the owner? A. I do not recall that.

Q. You cannot tell now whether he said that or not? A. No, I cannot. I have no recollection of such a conversation, and I do not recall of having any such knowledge in mind.

130 Q. You do not recall whether or not he told you that Mr. Key had applied to the owner for consent to make certain repairs and that consent had been refused? A. No, I don't recollect that.

Cross-examination.

By Mr. DUTTON:

Q. Did you, at any time during your operations in repairing this building, when Mr. Huyck passed, and during your conversations with him, ever hear any objection from him to anything that was being done? A. No that I recollect.

Q. Did he ever remark about the stability of the character of the work you were doing on the hotel? A. I don't recollect that he did.

Q. Did Mr. James Lockhead do any work while you were there? A. He was overhauling the plumbing, but not for me.

Q. For Mr. Key? A. For Mr. Key, I presume. In fact I know it was for Mr. Key.

Redirect examination.

By Mr. HOEHLING:

Q. You were asked whether or not you gave any notice to the defendant Madam d'Andigne of the filing of this mechanic's lien at the time you filed it. Do you know where she was living at that time? A. I think she was living in Paris. She was somewhere on the other side.

Q. You mean Paris, France? A. Paris, France. She was
131 not in this country.

Recross-examination.

By Mr. HAMILTON:

Q. Did you place a copy of the lien or notice of the filing of the lien on the premises of this hotel?

Mr. HOEHLING: I object to that as incompetent, immaterial and irrelevant.

A. No, I don't think I did.

By Mr. HOEHLING:

Q. Something was asked you as to the time of the completion of your work on this hotel Barton property. In the bill of complaint

which you filed in this case, in paragraph six, it is alleged that the work under you was begun on or about the 19th of November, 1900, and continued from day to day until on or about the 19th day of January, 1901, when the same was finished and completed. I will ask you whether or not that allegation or statement in your bill of complaint is correct? A. Yes, sir; that is correct.

CHARLES A. LANGLEY,
By the Examiner by Consent.

* * * * * * *

It is hereby stipulated and agreed by and between A. A. Hoehling, Jr., counsel for the above-named complainant, and by John J. Hamilton, counsel for the defendant d'Audigna, subject only
132 to the right of the latter to object to the materiality, competency and relevancy of the facts herein stipulated, as follows:

That under date August 1, 1901, said defendant d'Audigna, by Henry May her attorney in fact, entered into a certain written indenture of lease with The Barton Company, a corporation duly incorporated under the laws of the State of Delaware, covering the certain lands and premises in these proceedings referred to, known as the Hotel Barton, for the term of five years, commencing August 1, 1901, and terminating August 1, 1906, at an annual rental of $7,500, payable in monthly instalments of $625, in advance.

A true copy of said lease is as follows:

This indenture, made this First day of August, A. D. 1901, by and between Henry May, of the City of Washington, District of Columbia, Attorney in fact for Cecilia C. d'Andigne, of Paris, France, duly appointed by power of attorney, dated December 19th, 1894, hereinafter called the lessor, which expression shall include her heirs, assigns and attorney where the context so requires or admits, party of the first part, and The Barton Company, a corporation duly incorporated under the laws of the State of Delaware, herein called the lessee, which expression shall include its successors, and assigns, where the context so requires or admits, party of the second part:

Witnesseth, That for and in consideration of the rent hereinafter stipulated and agreed to be paid, and the covenants and agreements hereinafter stipulated and agreed to be kept and performed by the said lessee, the said lessor hath let and demised, and doth hereby let and demise unto the said lessee lots numbered nine (9),
133 ten (10) and eleven (11), in Davidson's Subdivision of Square numbered two hundred and twenty two (222), fronting seventy-five (75) feet on the East side of Fifteenth Street, Northwest, between New York Avenue and "H" Street, North, in the City of Washington, District of Columbia, together with all the buildings and improvements thereon, and with all the furniture and personal property in said premises, particularly described in a certain Schedule thereof signed in duplicate by the said lessor and the said lessee, and held by them respectively, the said property being known as

Barton's Hotel, together with all the rights, privileges and appurtenances thereunto belonging, or in anywise appertaining.

To have and to hold the same to the use of said lessee for and during the term of five years, commencing on the first day of August, A. D. 1901, and terminating on the first day of August, 1906, then to be fully complete and ended, at an annual rental of seven thousand five hundred dollars ($7,500.00), payable in monthly instalments of six hundred and twenty five dollars ($625.00), payable on the first day of each and every month during the continuance of the term of this lease, up to and including the first day of July, 1906, the first instalment of six hundred and twenty five dollars ($625.00) to be paid on the first day of August, 1901, or as soon thereafter as this lease shall be executed, and to be for the whole term the sum of thirty-seven thousand five hundred dollars ($37,500.00), all payments to be made to the said lessor, at the office of his agent duly appointed in writing:

And the said lessee, in consideration of the lease aforesaid,
134 does hereby covenant and agree to and with the said lessor as follows:

First. That he will faithfully, promptly and punctually pay the aforesaid monthly instalments of rent as they accrue and fall due, as hereinbefore specified, during the continuance of this lease, to the said lessor, or his agent duly appointed.

Second. That the said lessee will promptly and punctually pay all water rents, gas and electric-light bills that become due or that may be charged against said demised premises during said term, and make all repairs to elevator, steamheating apparatus, boilers and machinery, electric-light and heating plant, and general plumbing required in said demised premises; the said lessor hereby agreeing to pay the general taxes and the insurance that may be assessed against and placed upon said property.

Third. That the said lessee shall keep the said demised premises and the furniture thereon in good condition and repair during said term, and surrender the same at the end of said term in the like good order and condition as they now are, ordinary wear and tear and damage by the elements excepted.

Fourth. The said lessee shall not assign this lease, or assign or sub-let said demised premises, or any portion thereof, without the written consent of the lessor, or his duly authorized agent, first had and obtained, excepting only such portions as may be necessary for the barber shop, cigar stand, livery stable stand, newspaper stand and telegraph office.

135 Fifth. That no change shall be made in the construction of said building, or in alterations of partitions or stairways without the written consent of the lessor first had and obtained, but the said lessee may, with the written consent of said lessor, make improvements, alterations and extraordinary repairs.

Sixth. That the said lessee shall paint, or cause to be painted, at least twice during the term of this lease, the outside front of said Hotel and the roof and flagpoles thereon.

Seventh. The said lessee further agrees that the said Hotel shall

be operated in accordance with the highest possible standard, and that at no time during the continuance of this lease shall the said Hotel be closed to the public, unless caused by unavoidable accident.

Eighth. It is further agreed by and between the parties hereto that any failure or default by the said lessee or any person or persons to whom said demised premises may be assigned with the consent of the lessor, as aforesaid, or by any person or persons claiming through, by, or under said lessee, in the performance of any or either of the aforesaid covenants, shall at the option of said lessor, or his agent or attorney, work a forfeiture of the term and tenancy hereby created, and said lessor, or his agent acting in his behalf, may at his option re-enter in and upon said demised premises and re-possess the same and said furniture and personal property, and on any resistance being made to such re-entry and re-possession of the same under the laws of the District of Columbia, commonly referred to as proceedings between landlord and tenant, in favor of said lessor on a seven
136 days' summons, which summons shall be deemed to be in due form and duly executed if issued upon the petition of, and verified either by the lessor, his agent or attorney, and a copy thereof left upon said premises, the lessee hereby waiving all right to claim a thirty days' notice to quit (and the right of occupany during the time such notice might run), or other legal notice to remove from said premises. Provided always that any waiver of any breach of any or either of the aforesaid covenants shall not be deemed or held to be a waiver of any other or further breach of any or either of said covenants, or of any right of action for damages by reason of any such breach or breaches.

Ninth. And the said lessor doth hereby covenant with the said lessee that if the rent hereinabove reserved for the term hereinbefore created shall be punctually paid in the manner and at the times hereinabove specified, and each and every covenant hereinabove stipulated to be performed on the part of said lessee shall be kept and performed, said lessee or the person or persons to whom he may assign with the written consent of the lessor as aforesaid, shall have the option to renew this lease for a further term of five years from the termination of the term herein and hereby created, at an annual rental of eight thousand five hundred dollars ($8,500.00), which is to be entirely free and clear from all charges and deductions, whatsoever, payable monthly in equal monthly instalments in advance, and upon like covenants and conditions as are herein speci-
137 fied; provided, that written notice of an intention to avail of said option shall be given to said lessor, or his duly authorized agent or attorney, at least three months prior to the termination of the term herein and hereby created.

Tenth. And said lessor stipulates and agrees with the lessee that should said demised premises and furniture be destroyed by fire or so damaged by fire or other casualty as to render them unhabitable and unfit for use, no rent shall be charged for the time that the same shall be and continue in such condition; and in such event the lessee may at his option terminate this lease and the term and tenancy herein and hereby created.

Eleventh. And it is further agreed that the said Henry May, attorney in fact, his heirs or personal representatives, shall not in any manner be liable for the diminution of the term hereby created, or for any interference with said lessee's possession of said property.

Twelfth. It is further agreed that a complete schedule or inventory of all the furniture and personal property on said premises belonging to the landlord shall be made in duplicate at the time of the signing of this agreement, one copy of which is to be held by the landlord and the other by the lessee hereinbefore named.

In testimony whereof, The said lessor has hereunto set his hand and seal and the said lessee has caused these presents to be signed in its corporate name by Ralph Walsh, its President, and has constituted and appointed and does hereby constitute and appoint Ralph Walsh its true and lawful attorney to acknowledge and deliver these presents in its behalf.

138 Said agreement being in duplicate.

HENRY MAY, [SEAL.]
Attorney in Fact for Cecilia C. d'Andigne.

[SEAL.] THE BARTON COMPANY,
By RALPH WALSH, *President.* [SEAL.]

Signed, sealed and delivered in the presence of:
JACOB REED.

DISTRICT OF COLUMBIA, *To wit:*

I, William L. F. King, a Notary Public, in and for the District aforesaid, do hereby certify that Henry May, Attorney in fact for Cecilia d'Andigne, who is personally well known to me to be the person who executed the foregoing and annexed Indenture of Lease, dated August 1st, 1901, personally appeared before me, and acknowledged the same to be the act and deed of his principal.

Given under my hand and Notarial Seal this first (1) day of August, A. D., 1901.

WM. L. F. KING,
[NOTARIAL SEAL.] *Notary Public, D. C.*

That under the said lease, said lessee paid the agreed rentals to said defendant d'Audigna covering the term August 1, 1901 to and including May 31, 1904, the same aggregating the sum of $21,250, gross.

139 Counsel for the defendant d'Audigna reserves the right to object to the evidence set forth in this stipulation on the ground that it is irrelevant, immaterial and incompetent testimony in this case, for the reason that the records of this court, in Equity cause No. 22,044, James P. Scott *vs.* J. Barton Key, show that the defendant Key failed to live up to his lease, failed to pay rent, and all his interest under said lease in the property described herein was sold by a receiver appointed by this Court; and for the further reason that the lease to The Barton Company was a separate and independent transaction between that Company and the defendant d'Audigna.

Testimony for complainant- closed.

140 *Testimony on Behalf of Complainant-.*

Filed May 3, 1907.

In the Supreme Court of the District of Columbia.

Eq. No. 22963.

JAMES LINSKEY and EDWARD LINSKEY, Copartners, Trading as James Linskey and Son, *et al.*
vs.
CECILIA C. D'AUDIGNA ET AL.

WASHINGTON, D. C., *March* 12, 1906— 3.30 o'clock p. m.

Met pursuant to notice at the office of Tucker and Kenyon, Colorado Building, Washington, D. C.

Present on behalf of the complainants, Mr. Kenyon and Mr. Bailey.

Present on behalf of defendant No. 1, Mr. John J. Hamilton.

Present on behalf of defendant No. 4, Mr. Edward C. Dutton.

Mr. BAILEY: We offer in evidence copy of mechanic's lien of James Linskey and Edward T. Linskey, copartners, trading as James Linskey and Son, for $881.25, filed February 15, 1901, at 2.15 p. m., No. 4852, which copy was filed as an exhibit in the original bill of complaint.

We also offer in evidence copy of the mechanic's lien of William H. McCuen, filed February 15, 1901, at 3.15 p. m., No. 4851, for $272.55, said lien being against property known as the Barton
141 Hotel in this city, and which was filed as exhibit No. 6 to the original bill of complaint.

We also offer in evidence copy of mechanic's lien of William H. McCuen and George R. Herbert, copartners, trading as William H. McCuen and Company, filed February 15, 1901, at 3.15 p. m., No. 4850, for $1877.23, against property known as Hotel Barton in this city, said copy of lien being exhibit No. 7, to the original bill of complaint.

WILLIAM H. MCCUEN, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined:

By Mr. BAILEY:

Q. Please state your full name. A. William Henry McCuen.

Q. Where do you reside, Mr. McCuen? A. In Alexandria.

Q. What business are you engaged in? A. I am in two businesses, in tinning and galvanized work, and steam and hot water heating.

Q. In the District of Columbia? A. In the District of Columbia, at 1016 Connecticut Avenue.

Q. How long have you been engaged in these two businesses? A. Well, in the metal business about thirteen years; and seven or eight years in the steam and hot water business.

Q. Under what name do you conduct your steam and hot water business? A. William H. McCuen & Co.

Q. Who are the members of the firm? A. George R. Herbert and myself.

142 Q. Mr. McCuen, are you the William H. McCuen named in the bill of complaint filed against Cecilia C. d'Audigna and others, to enforce a mechanic's lien, said bill of complaint being No. 23143? A. I am.

Q. At that time was Mr. Herbert your partner? A. He was.

Q. How long prior to that had he been your partner? A. I should say a couple of years, since the formation of the steam and hot water business.

Q. Will you please state whether the firm of William H. McCuen & Co., of which you are a member, put in a heating plant or apparatus in the Hotel Barton in this city? A. We did; yes, sir.

Q. When was that done, Mr. McCuen? A. I don't know the exact year; Mr. Bailey.

Q. Will you please state by whom you were sent for the purpose of doing this work? A. Well, we had formerly made an estimate to heat this property, then known as the Wellington Hotel, I think, for a Mr. J. V. N. Huyck.

Q. When was that estimate made? A. That was in January, I think—January of 1900 or 1901, something, like that. Mr. Huyck had the estimate, and one day he called us up, or called me up——

Mr. HAMILTON: I object to any testimony as what occurred between this witness and Mr. Huyck.

By Mr. BAILEY:

Q. State it as briefly as you can, giving us the facts. A.
143 We had made an estimate for Mr. Huyck, for the owner and he called us down to make an estimate with these parties, as he had our former contract with the owner.

Q. What parties? A. Mr. Key. So I went over to his office in The Wellington, which was afterwards known as the Barton, I think, and signed a contract there with Mr. Key, and then I came back and told Mr. Huyck what I had done, and he said——

Mr. HAMILTON: I object to this witness stating anything that occurred between Mr. Huyck and himself with regard to this matter, as being hearsay testimony and incompetent and irrelevant to the issues in the case.

By Mr. BAILEY:

Q. Go ahead. A. I told him what I had done, and he said that was all right, that they were perfectly good, and they had a thousand

dollars a year there for five years—$5000—to go on the improvements of the building..

Q. Before you signed the contract you refer to, did you have any conversation with Mr. Huyck in respect to the matter of this $5000 provision in the lease? A. He told me there — $5000 to be given to the parties fixing up the hotel, to be paid at the rate of $1000 a year; that $1000 was to be deducted from the rental to go on the improvements.

Q. What, if any, knowledge did you have with respect to the agency of Mr. Huyck for that property at that time? A. I knew he was the agent, because we had made an estimate for him to put the heating in that building.

144 Mr. HAMILTON: We object to any testimony if the object is to prove any agency between Mr. Huyck and the defendant d'Audigna.

By Mr. BAILEY:

Q. For the purpose of fixing the date, Mr. McCuen, I show you a copy of a letter. A. June 1, 1900.

Q. Was that the date the estimate was made for Mr. Huyck? A. Yes, sir; that is a copy of the original estimate.

Q. Mr. McCuen, I show you a copy of a contract, denominated Specification and Contract, Exhibit No. 3 to the original bill, purporting to be signed by William H. McCuen & Co. per G. R. Herbert, and also signed J. Barton Key. Is that the signature of William H. McCuen and Company per G. R. Herbert? A. Yes.

Q. Is that the signature of J. Barton Key? A. Yes, sir.

Q. You are familiar with his signature? A. Yes, sir.

Mr. BAILEY: We offer the contract in evidence. It is a contract between William H. McCuen & Company and J. Barton Key, dated November 21, 1900.

Said contract, offered in evidence by counsel for the complainants, is marked exhibit No. 3, and attached to the bill of complaint in this cause.

By Mr. BAILEY:

Q. After the signing of this contract by your firm and Mr. Key, what if any work was performed by you? A. Then we went to work and put the heating in the Barton Hotel—the steam heating.

145 Q. Please state the full scope and nature of the work that you did—the full scope and character of the work. A. Well, we put new radiators and new piping, practically through the entire house.

Q. What was the condition of the house with respect to heating before you put in this heating apparatus, or plant? A. Well, the house was not heated at all, only that the rooms were heated by means of fire places, and there were a few radiators in the halls; but it was untenantable, as far as the heating was concerned, except for these fire places.

Q. As I understand it, you say there was no heating at all in the

rooms except fire places? A. Fire places, and a few radiators in the halls.

Q. The original estimate here shows that you contracted to do this work for $2,060; and you also claim an additional sum of $317.23 for extra work performed. Please state whether or not this $317.23, extra, was included in the original estimate? A. No, sir.

Q. Did you do that extra work, $317.23? A. Yes, sir.

Q. Did you put in the heating plant and the entire apparatus, and carry out the contract in accordance with the terms thereof? A. Yes, sir.

Q. You have also filed a mechanic's lien and a bill for the enforcement of that lien for yourself, individually, for $272.55. Please state what this consisted of. A. Of overhauling the ranges,
146 putting the kitchen in order, ready to use it as a hotel, and fixing up the fire places throughout the house—throughout the hotel proper,—so that when they were not using the steam heating they could use the fire places in place of it.

Q. Was this $272.55 referred to and included in the original contract with William H. McCuen & Co.? A. No, sir; it was separate altogether. This was for a different kind of work altogether.

Q. What, if any, payments have been made on account of the work done there by William H. McCuen & Co.? A. There is one payment of $500. We had the terms of payments there. There is one payment of $500. That was paid us as soon as we went for it. We had another payment a couple of weeks after that, and unfortunately we did not go for it.

Q. As I understand it then, $500 is all you have received on account of it? A. That is all.

Q. Did you ever render bills to J. Barton Key for the amount called for, after having completed the work? A. Yes; and we were promised the payment of it by him and also by his bookkeeper. They said they were just waiting to straighten up the affairs, and we would get our money.

Q. Was any objection made to those bills, as rendered? A. None whatever; no, sir. They were very much pleased with it, and thought it was quite reasonable; and we expected our money.

Q. Was any payment made to you individually for the bill
147 rendered for $272.55? A. None.

Q. This bill was rendered to J. Barton Key? A. Yes, sir.

Q. Have you your books of accounts with you to day, Mr. McCuen? A. No, sir; the books are in the office.

Q. I show you this bill (handing paper to witness). Is that taken from your books of account? A. Yes, sir.

Q. Is that a true copy? A. Yes, sir.

Q. Was that taken from your books of account, trading under the name of William H. McCuen? A. Yes, sir.

Mr. BAILEY: We offer in evidence these two bills, as copies of the books of account in respect to the work done by William H. McCuen & Company for J. Barton Key, and work done by William H. McCuen for J. Barton Key.

Mr. HAMILTON: We object to the offer on the ground that they are copies, and that it is not the proper way to prove an account.

Said papers, offered in evidence by counsel for the complainants, are appended hereto, marked exhibit W. H. M., No. 1 and exhibit W. H. M., No. 2.

Mr. BAILEY: We also offer to produce at the trial, if necessary, the books of account of William H. McCuen & Company and of William H. McCuen, containing the transactions and work done for J. Barton Key on the property known as Hotel Barton.

148 Mr. BAILEY:

Q. What, if any, work had you ever done on this building, the Hotel Barton, prior to this work which we are talking about?

Mr. HAMILTON: I object to that, on the ground that it is wholly irrelevant and immaterial to the issues in this case.

A. None before; but since we have, by direction of Mr. Huyck, and have been paid for it.

By Mr. BAILEY:

Q. Mr. Huyck employed you? A. Yes, sir.

Mr. HAMILTON: I object to the answer on the ground that it is irrelevant and immaterial, and will move at the hearing that it be stricken out.

Cross-examination.

By Mr. HAMILTON:

Q. Mr. McCuen, did you see Mr. Key sign this contract which you have offered in evidence? A. I did, sir.

Q. You stated that you did the work called for by this contract? A. Yes, sir.

Q. And that you received the first payment of $500 called for by the contract? A. Yes, sir.

Q. I note that the contract calls for the last two payments to be in the shape of promissory notes for four and six months,
149 to be endorsed by James P. Scott. Did you get those notes from Mr. Key? A. No, sir.

Q. Did you ever make a demand for them? A. Yes, sir.

Q. Why did he not give them to you? A. Well, because he had promised to get Mr. Scott, as soon as he could get him sober, was the way he would always put it—that if he could ever get him sober he would get these matters fixed up.

Q. Who was Mr. James P. Scott? A. I don't know.

Q. He was Mr. Key's backer, was he not, the man who was loaning him money? A. Yes, sir; that was the supposition. I don't know.

Q. You stated that the $317 referred to in the bill of complaint for extra work, was not included in this contract? A. No, sir.

Q. Who did you make a contract with for that extra work? A. The extra work would be when he would want some changes, at different places, and perhaps have some more radiation put in at different places.

Q. Who do you mean by he? A. Mr. Key.

Q. So that the only arrangement you had for this extra work grew out of conversations you had with Mr. Key while your principal contract work was going on, in which conversations he wanted extra material added or extra work done? A. Well, not conversations. It would be an order, each time, by Mr. Key to have this work done.

150 Q. Did this contract have anything to do with the $272.55 for which you individually have filed a lien? A. No, sir.

Q. Who did you contract with with regard to that work? A. That work could not be contracted for, because he did not know what he would want done.

Q. Who authorized you to do the work? A. Mr. Key.

Q. Did you have any understanding with him as to what the cost of it would be? A. No, sir.

Q. He simply told you to go on and do what was necessary? A. He would order what he wanted done, and when we got that done he would order something else to be done.

Q. So that if I understand you correctly this item of $272.55 consists of various little odd jobs of work done by you at Mr. Key's direction? A. Yes, sir.

Q. Who made this $500 payment to you? A. Mr. Key.

Q. Do you remember where this contract was signed? A. When it was signed?

Q. Where? A. Yes, sir; it was signed in the small office in the southwest corner of the Barton, that Mr. Key had for his office up there, for himself.

Q. You have testified that you made an estimate for Mr. Huyck on this building sometime in January, 1900. Is that correct?

151 A. Well, I am not positive about the month. It was in 1900 I know, sometime before Mr. Huyck called on us and introduced us to Mr. Key.

Mr. KENYON: We will show you a letter that contains a copy of the estimate, and gives the date as June 1, 1900.

The WITNESS: I am not positive about the month.

Mr. HAMILTON: He said January.

Mr. KENYON: He said January, but this letter gives the date as June 1.

By Mr. HAMILTON:

Q. You say Mr. Huyck called on you and requested you to give Mr. Key an estimate? A. Yes; Mr. Huck called us up, or called me up, and in fact introduced me to Mr. Key, and then we gave Mr. Key this estimate that we had formerly made to him.

Q. What month was that? A. I reckon it was long about in November somewhere.

Q. What year? A. 1900.

Q. You say Mr. Huyck called you up on the telephone and told you that Mr. Key had some work that you could do for him? A. That he wanted us to come down there to see him——

Q. Wait a minute. Explain fully how that took place. A. Well,

he called us up over the telephone, and I don't know whether he said Mr. Key or not, but he told me to come down, and I went, and he introduced me to this man Key.

Q. Tell us what took place on the telephone, what he said
152 to you? A. I don't know what he stated to me in exact words, but anyhow, from the telephone message, I went down to Mr. Huyck's office, and there I was introduced to this man Key.

Q. Did the introduction take place in Mr. Huyck's office? A. It certainly must have, when I have told you that I went to Mr. Huyck's office.

Q. What was the object of that introduction?

Mr. KENYON: We object to that. It seems to me you might show what the result was.

Mr. HAMILTON: That is what I am trying to get at.

Mr. KENYON: Then I will withdraw the objection.

By Mr. HAMILTON:

Q. Go ahead. A. Then we were introduced to Mr. Key. Mr. Huyck told us Mr. Key was the man who was going to open the Hotel which was the old Wellington property, and he wanted to have it heated, and he claimed he wanted to get in there as quick as possible. He said "You have already made an estimate on this property." We told him we had.

Q. Who said that? A. Mr. Key.

Q. After Mr. Huyck introduced you to Mr. Key, your negotiations then were had with Mr. Key direct, resulting in the contract signed November 21st, 1900. That is correct, is it not? A. Yes, sir.

Q. You say you never did any work on the building before the date of this contract? A. No, sir.

153 Q. For anyone? A. No, sir; not as I recall.

Q. You have also testified that after getting this contract with Mr. Key you went back to Mr. Huyck and told him that the contract had been awarded to you. Is that correct? A. Yes, sir.

Q. Why did you go back to Mr. Huyck and tell him Mr. Key had awarded you the heating contract? A. Because we wanted to find out just exactly about how the money was going to be paid, who Mr. Key was, and all that.

Q. Then Mr. Huyck, you say, told you that Mr. Key had a lease? A. Yes, sir; and he told us he was perfectly good, and had plenty of money back of him.

Q. Wait a minute, until I get my question down. That Mr. Key had a lease which permitted hom to deduct $1000 a year for five years for repairs that might be put on the building. Is that correct? A. That there was an allowance there of $1000 a year for five years—$5000—in consideration of this man Key improving the building.

Q. Did you ever make a demand on Mr. Key or Mr. Huyck to show you that lease? A. No, sir.

Q. Did you ever see the lease? A. Never.

Q. In making your contract with Mr. Key did you go over the

house with him and decide between you what was to be done?
154 A. Yes, sir; that is the reason our estimate to Mr. Key is less that what it is to Mr. Huyck.

Redirect examination.

By Mr. BAILEY:

Q. Why was an estimate for less cost made to Mr. Key than the one you formerly presented to Mr. Huyck?

Mr. HAMILTON: I object on the ground that it is irrelevant and immaterial.

A. When we start out to heat a building on a guarantee we generally figure to heat each room to 70 degrees in zero weather. Mr. Key would come to a room and say "This is going to be occupied as a bed room. That, perhaps, will not want to be over 50 or 60 degrees" and we would cut out half the amount of radiation. Then we would go to another room, and it would practically be the same thing. We cut down the radiation considerably from what we had figured on.

Q. And that led you to reduce the bill? A. Yes. It was understood that because of that they would not be heated to 70 degrees in those rooms. He said he would not want it, and that is the reason he had grates fixed up, so that he could use a grate fire.

Q. There seems to be some confusion as to the time when Mr. Huyck told you the provision of the lease allowing $1000 each year for five years for any alterations or improvements going on the building. I wish you would please state whether he informed you of that provision of the lease prior to or after the contract with Barton Key. A. After we had made the contract with Barton Key I went back—

I was very friendly with Huyck—I went back and told him
155 what had been transacted, and he told me that was all right, that it was perfectly safe, and that there was plenty of money back of it, and that they were allowing $5000 there for the improvement of the building. That was after we had made the contract and before starting the work at the Barton.

Q. Was it before you signed the contract? A. No; after we signed the contract.

Q. Prior to that did Mr. Huyck make any mention of that provision in the lease to you? A. No, sir; because it was all done within about one day.

By Mr. DUTTON:

Q. Mr. McCuen, was there any plumbing work done in the Hotel Barton while you were at work there? A. Yes, sir.

Q. Do you know by whom it was done?

Mr. HAMILTON: There will not be any serious controversy about the bills. Nobody is controverting the amount of the bills.

Mr. DUTTON: That is all, then.

Mr. HAMILTON: We are not contesting the amount of anybody's bill. We simply do not know anything about it.

WILLIAM H. McCUEN,
By the Examiner by Consent.

Subscribed and sworn to before me this — day of —— A. D. 1906.

—— ——,
Examiner in Chancery.

156 WILLIAM L. F. KING, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined.

By Mr. KENYON:

Q. Please state your full name, residence and occupation. A. William L. F. King; Washington; Real Estate & Insurance.

Q. Where were you employed during the year 1900? A. With J. V. N. Huyck.

Q. With him? A. Yes, sir.

Q. What business was he in then? A. The real estate business.

Q. Where was his office? A. 1505 Pennsylvania Avenue.

Q. Do you know of your personal knowledge whether or not Mr. Huyck was agent for the Countess d'Audigna? A. Yes, sir; he was.

Q. State what your particular position with Mr. Huyck was. A. Well, I was associated with him rather closely for a number of years. I had charge with him of all the business there.

Q. So that matters relating to the Hotel Wellington would come under your personal notice? A. Yes, sir; a great many of them did.

Q. Do you know Mr. William H. McCuen, named as one of the complainants in this suit? A. Yes, sir.

Q. Did you ever have any conversation with him in regard to the lease for the Hotel Barton, and in regard to its provisions?

157 A. I think I did.

Q. Do you know whether Mr. McCuen and McCuen & Company did any work on that hotel? A. Yes, sir; I know they were there working.

Q. Was your conversation in regard to the lease with them prior to this work, or after? A. I think it was at the time they were working on the hotel.

Q. Did you state to McCuen & Company or to William H. McCuen individually any of the provisions of this lease; and if so, what did you tell him?

Mr. HAMILTON: That is objected to as being irrelevant and immaterial, any statement that this witness might have made not being binding upon the defendant d'Audigna.

A. I told Mr. McCuen of the provision which provided that $1000 was to be allowed on the rent for the improvements that Mr. Key might make; and also told Mr. Linskey that.

By Mr. KENYON:

Q. Mr. King, what was the sum total to be allowed for the improvements? A. To my recollection it was $5000.

Mr. HAMILTON: The lease speaks for itself. It is in evidence.

By Mr. KENYON:

Q. You state that you also informed Messrs. Linskey and Son of the provisions of this lease? A. And another man.

Q. I will ask you if you told Messrs. Linskey and Son of this provision before they began their work upon it? A. I am not
158 certain about that.

Q. Had Linskey and Son ever done any work on this building prior to this work that Mr. Key ordered?

Mr. HAMILTON: That is objected to as immaterial and irrelevant.

A. Yes; considerable work.

By Mr. KENYON:

Q. Have they done any since?

Mr. HAMILTON: The same objection.

A. No; I do not know about that.

By Mr. KENYON:

Q. Who paid them for the work they did prior to the work ordered by Mr. Key? A. Mr. Huyck.

Q. Did he pay them in his individual capacity or for some one else? A. By agent's check, as the agent for Madam d'Audigna.

Cross-examination.

By Mr. HAMILTON:

Q. You are in business for yourself, now? A. Yes.

Q. You are no longer associated with Mr. Huyck? A. No, sir.

Q. Did you have any personal knowledge as to the employment of Mr. Huyck by Madam d'Audigna? A. Yes, sir; I had. I have seen letters which she had written, and have been present at conversations that they had.

159 Q. My question was if you had any personal knowledge of the extent of his employment by her? A. I do not believe I have. He was agent for the Barton, and all the other properties she had here.

Q. What do you mean, as agent for the Barton? Agent for the collecting of rents? A. Collecting rents and disbursing moneys; and he had loans renewed.

Q. He did not rent the property in his own name as agent for her, did he? A. No, he did not. It was signed by Henry May, as attorney in fact.

Q. Who was he acting as attorney in fact for? A. Madam d'Audigna.

Q. So that all Mr. Huyck's authority consisted of was for the purpose of obtaining a tenant for these premises, collecting rents, and attending to the insurance on the building? A. He represented her so far as the property was concerned, fully.

Q. What other authority did he have than on the subjects which

I have just enumerated, Mr. King? A. I don't think he had any other.

Q. Then, as I say, to put the question again, he represented her, according to your understanding, for the purpose of obtaining a tenant for this building, collecting the rent, and attending to the insurance on the building? A. And keeping up the payments, and the renewal of loans, and paying them off when they came due. He also loaned a good deal of money for her, and attended to that when the notes were paid off.

160 Q. I am not referring to what he did generally, but am talking with reference to this property. He looked after the payment of interest for loans which she had on this property? A. Yes, sir; they were renewed two or three times, to my knowledge.

Q. Did he pay the interest out of the rents collected by him for her? A. Yes; I have several times cabled or wrote to her, and she has remitted money from Paris.

Q. You never saw any contract between Mr. Huyck and Madam d'Audigna by which he was employed to act as her agent, did you? A. No, sir.

Q. You say you think you had a talk with Mr. McCuen while he was working on the building, in which talk you told him of the provisions of the lease? A. Yes, sir.

Q. Do you know how long he had been working on the building when you had this conversation with him? A. No; it may have been before he started or just about the time. I really cannot tell you that.

Q. You simply know he was engaged in work there at the time? A. Engaged or about to be engaged, and he asked me about the lease, or its provisions.

Q. Mr. McCuen has testified, that Mr. Huyck is the man he asked about the provisions of the lease. Can you state whether it

161 was Mr. Huyck or you who gave him this information? A. I don't know what information Mr. Huyck gave him. I know what I gave him.

Q. He did ask you about it? A. Yes, sir.

Q. You have also testified that you told Mr. Linskey the provisions of this lease. Under what circumstances did you tell him that? A. I think it was under about the same circumstances as with Mr. McCuen.

Q. Which Mr. Linskey did you tell about that? A. I am not certain about it, whether it was the old gentleman or the son. I thing it was the son.

Q. You mean that while they were at work over there you at some time told them about these provisions in the lease, providing for the $1000 a year? A. Yes, sir.

Q. On account of the improvements? A. That was either just before they went to work or while they were working.

Q. You do not know whether it was before or after they had made the contract with Mr. Key for the work? A. I could not tell you that.

Q. And you cannot say whether the conversation you had with Mr. McCuen was before or after he had signed the contract for the work? A. No, sir.

Redirect examination.

By Mr. KENYON:

Q. I have one or two questions more. Did you ever tell
162 the other member of the firm of McCuen & Company of the provisions of this lease? A. Mr. Herbert?

Q. Yes. A. I think I have.

Q. Repairs were made on this hotel from time to time, were they not, before this Key transaction? A. Yes, sir.

Q. Who ordered those repairs?

Mr. HAMILTON: I object on the ground that it is wholly irrelevant and immaterial.

A. Mr. Huyck.

By Mr. KENYON:

Q. Who paid for them? A. He did.

Q. Who were those repairs charged to? A. Madam d'Audigna.

Q. Were they allowed by her in Mr. Huyck's accounting to her?

Mr. HAMILTON: I make the same objection.

A. Yes; they were allowed.

By Mr. KENYON:

Q. Was Mr. Huyck the agent for the sale of this property? A. always did have the agency, yes, sir, and submitted several propositions for the sale or exchange of it.

Q. Do you know of your personal knowledge whether she ever asked him to try and make a sale, and set a price to him? A. Yes, she did.

Q. Did Messrs. Linskey & Son——

163 Mr. HAMILTON: Do not lead the witness.

By Mr. KENYON:

Q. Or Messrs. McCuen & Company and Mr. McCuen individually, at the time they asked you about the provisions of the lease, tell you why they wanted to know? A. Yes.

Q. What was it they said? A. That they were about to, or were going to do some work there, and wanted to know what we thought about it—what I thought about it; about whether they would get their money or not.

Q. And was that the reason for your telling them? A. That was the reason.

Recross-examination.

By Mr. HAMILTON:

Q. When did Mr. Herbert ask you about the provisions of this lease? A. It was probably the same day, or maybe they were both

together. My recollection is that Mr. Herbert and Mr. McCuen saw me together.

Q. You say they told you that they were doing or were about to begin to do some work for Mr. Key and wanted to know what you thought about their prospects of being paid for it? A. Yes, sir.

Q. And you thereupon told them what the lease said upon the subject? A. I told them about the lease; yes, sir.

WM. L. F. KING,
By the Examiner by Consent.

164 WILLIAM H. MCCUEN, who had been previously sworn, is recalled for further direct examination.

By Mr. KENYON:

Q. Mr. McCuen, can you state whether you had any conversation with anyone other than Mr. Huyck in regard to the provisions of this lease, and if so with whom? A. With Mr. King, at Mr. Huyck's office.

Q. What did he tell you about the provisions of it? A. Practically the same thing as Mr. Huyck.

Cross-examination.

By Mr. HAMILTON:

Q. Where did you see Mr. King? A. At the very same time I saw Mr. Huyck.

Q. So that they both told you together there what the provisions of the lease were on the subject? A. About the same time. After Mr. Huyck told us, perhaps I might have gone to Mr. King, in private conversation, to see what I could find out from him; but the conversations were within a couple of minutes of each other.

Q. It all took place at one visit? A. Yes, sir.

Q. Was Mr. Herbert with you at that time? A. That I don't know; I am not positive.

Redirect examination.

By Mr. KENYON:

Q. Are you positive as to which you saw first in regard to the provisions of the lease, Mr. Huyck or Mr. King? A. Mr. Huyck, because Mr. Huyck had put me on to the work; and when I went to see Mr. Huyck and got what I could get out of him, I went to see Mr. King, or called Mr. King and asked him.

165 By Mr. HAMILTON:

Q. You called Mr. King and talked with him? A. Yes, sir.

By Mr. KENYON:

Q. Do you recall whether or not Mr. Huyck was at the hotel during the time you were working or making repairs there? A. Oh, yes, sir; I might say daily, practically three times a day.

Q. He had knowledge of what you were doing then? A. At all times.

Q. Did he make any objection to it? A. None whatever.

Q. Did you confer with Mr. Huyck at all as the work progressed? A. No; I do not know that I did.

Recross-examination.

By Mr. HAMILTON:

Q. You do not mean to say that Mr. Huyck was in that hotel while you were doing your work; do you? A. Coming to the hotel?

Q. Inside of the building? A. Yes, sir; Mr. Huyck and Mr. King, too, several times; in fact almost daily, I should say. I could see them any time.

Q. Is it not a fact that the only time you ever saw Mr. Huyck anywhere near the place was when you saw him out on the sidewalk in front of the building? A. No, sir; he was in there one day admiring the beautiful entrance they had there.

166 Q. You never had any conversations with him on those occasions, did you? A. Every time I would meet him, if I would be close to him, I would have conversation with him, yes. I could not tell what the nature of the conversation was.

Q. I mean you did not discuss with him the character of the work you were doing at that time, or anything about your work? A. I don't know that I did, because he knew the character of the work I was doing and he knew what I was doing.

Q. My question was, did you have any conversation with him about it on any of those occasions when you saw him in the hotel? A. I would not say positively. Perhaps I did.

Q. I want your knowledge on the subject——

Mr. KENYON: He says he does not remember.

Mr. HAMILTON: I want him to say that. He has not said that.

The WITNESS: I could not say that I did, or I did not; but the chances are that I did, each time I would meet him there. The chances are that I talked about the work.

Mr. HAMILTON: I move to strike out the last part of the witness's answer, as not responsive, and as not being evidence in the case.

WILLIAM H. McCUEN,
By the Examiner by Consent.

Subscribed and sworn to before me this — day of ——, A. D., 1906.

——— ———,
Examiner in Chancery.

167 GEORGE R. HERBERT, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined.

By Mr. BAILEY:

Q. I believe you are a member of the firm of William H. McCuen & Company? A. Yes, sir.

Q. Your name is George R. Herbert? A. Yes, sir.

Q. How long have you been a member of that firm? A. Six years.

Q. I show you a contract purporting to be between William H. McCuen & Company and J. Barton Key.

Mr. HAMILTON: That is the same contract?

Mr. BAILEY: Yes.

By Mr. BAILEY:

Q. Purporting to be between William H. McCuen and Company and J. Barton Key, per G. R. Herbert. Did you sign the firm name to that? A. Yes I did.

Q. When, and how was your attention first called to the fact that work was desired to be done at the Hotel Barton in this city? A. Mr. McCuen told me there was a message at the office for some work to be done at the Wellington, as it was then, and to go down and to see Mr. Key, which I did.

Q. You first saw Mr. Key? A. Yes, sir.

Q. What took place at that time between you and Mr. Key?

168 A. Why, Mr. Key said he was going to lease the building, or had leased it, and wanted a steam heating apparatus put in there; and he said Mr. Huyck had turned our estimate over to him, and that he wanted to go over it and to have a plan made so that he could see what was to be done, and what could be cut out. He wanted to reduce the estimate. Do you want me to continue?

Q. Yes. A. Then we went over the building.

Q. You and Mr. Key? A. Yes, and took measurements again, and made a plan; we specified certain things as he wanted them in these rooms, which very materially cut that original estimate down. Then he left off the top story of the north wing. He did not want that heated at all, at that time. That cut it down considerably. But after we made the contract he added on the top story and several other things.

Q. The day you went to see Mr. Key did you and he on that same day go over the building? A. Yes.

Q. When, if at all, did you see Mr. Huyck and Mr. King with respect to the matter? A. I did not see Mr. Huyck in respect to the matter at all; but I did see Mr. King right after the contract was signed, but before we started work.

Q. What conversation, if any, took place between you and Mr. King in respect to the matter?

Mr. HAMILTON: That is objected to as being irrelevant and immaterial, and incompetent for the purpose of binding the defendant d'Audigna.

169 A. I asked him about what the prospects were of getting payment there. We did not know Mr. Key very well, and we acted more on the strength of Mr. Huyck and Mr. King, as agents.

Q. You told Mr. King that? A. I told Mr. King that. He said it was all right, that $5000 would be allowed from the rents to pay for these improvements, and that it would be perfectly safe for us to contract.

Q. Where did you see Mr. King, Mr. Herbert? A. I met Mr. King right in front of his office, in front of Mr. Huyck's office.

Q. Why did you ask him about it? A. Just as I stated a few minutes ago, that we did not know Barton Key very well, and we wanted some assurance from someone.

Q. As I understand you, this conversation took place between you and Mr. King prior to the beginning of the work? A. Yes.

Q. But subsequent to the signing of the contract? A. Yes.

Q. Was the work performed in accordance with the terms of the contract? A. Oh, yes.

Q. I observe that the estimate calls for $2060, and that there is an extra charge of $317.23. Was this included in the original contract for this work? A. No.

Q. After having completed the work, did you render a bill for the amount to Mr. Key? A. Yes.

170 Q. What, if any, payment was made on account? A. Five hundred dollars.

Q. I show you exhibit No. 4 to complainants' bill, which says, "January 31, 1901, to steam heating, as per estimate, by W. H. McCuen & Co., $2060. Extra, by W. H. McCuen & Co., $317.23. Total, $2377.23. Credit, December 20, 1900, by cash on account, $500, leaving a balance of $1877.23." Is that a correct statement of the account? A. That is correct.

Q. Was that account rendered to J. Barton Key? A. Yes, sir.

Q. Was any objection ever made to it? A. None whatever.

Q. It is still due and unpaid? A. It is still due and unpaid.

Cross-examination.

By Mr. HAMILTON:

Q. By whom was this statement of the contract price, the credit, and the balance due, which Mr. Bailey has asked you about, made up? A. By whom was the statement made up?

Q. Yes? A. By our book-keeper.

Q. You mean by the book-keeper employed by your firm? A. Yes, sir.

Q. From what was it made up? A. From what?

Q. From what was it made up? A. From our books.

171 Q. Who is that book-keeper? A. Her name is Miss Pratt.

Q. And this typewritten statement of the account was made up by her? A. Yes, sir.

Q. So that you have no personal knowledge as to the condition of the books, have you? A. No; I have no personal knowledge.

Q. Now, who made this agreement with you for extra work, amounting to $317.23? A. J. Barton Key.

Q. That was made sometime after your original contract, was made, was it not? A. Yes; that was not a contract. That was just orders from day to day, for different things. That includes the heating of the north wing, as I stated a while ago, which was cut down from the original estimate. Then it was added on after we started to work under the original contract.

Q. And they were given to you sometime after the original contract was entered into? A. Yes, sir.

Q. You have testified that Mr. McCuen told you the message had come to the effect that Mr. Key wanted some work done on the Barton Hotel, and that you thereupon went down there and saw him. I will ask you if Mr. McCuen accompanied you on that trip? A. Not at first.

Q. Was it only you and Mr. Key who went through the
172 house together? A. Yes, sir.

Q. Did you give him an estimate then, after going through the house? A. No, we did not give him the estimate then. It was several days. Of course we made a plan, a layout of the work, and submitted it for approval.

Q. You finally did give Mr. Key the estimate, and entered into the contract with him? A. Yes, sir.

Q. You say you had to make a plan for this work? A. Yes.

Q. And it was several days between the time you went over the house with him and the time when the contract was actually signed? A. Yes, sir.

Q. You looked to the lessee of this hotel, Mr. Key, to pay you according to your contract, did you not? A. Well, I don't know. As far as I am personally concerned I felt that if that was not paid the building could be liened, and we would be safe.

Q. You made the contract with Mr. Key, providing for payments by him, did you not? A. Yes.

Q. Did you not expect payments according to the terms of the contract. A. I certainly did.

Q. And you thought that if Mr. Key did not pay according to the terms of the contract you would have a right of lien against
173 the building? A. Yes, sir.

Q. And on that theory you entered into the contract? A. Yes.

GEORGE R. HERBERT,
By the Examiner by Consent.

EDWARD T. LINSKEY, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined.

By Mr. BAILEY:

Q. Mr. Linskey, will you state your full name? A. Edward T. Linskey.

Q. And your occupation? A. Painter, decorator, and paper hanger.

Q. You are a member of the firm of James Linskey & Son? A. Yes, sir.

Q. Where do you reside? A. 2240 35th Street.

Q. How long has your firm been engaged in business as painters, decorators and paper hangers? A. It has been engaged in the painting business—my father has—about thirty five years, I think, and I have been with him, I guess, about ten or twelve years; about ten years.

Q. In November, 1900, who composed the firm of James Linskey & Son? A. James Linskey and Edward T. Linskey.

Q. And you are Edward T. Linskey? A. Yes, sir.

174 Q. Mr. Linskey, the firm of James Linskey & Son have filed a bill of complaint to enforce a mechanic's lien for work done on the Hotel Barton in this City. Will you please state with whom you made this contract, and when? A. Well, I cannot state——

Mr. HAMILTON: You had better ask him if he or his father made the contract.

By Mr. BAILEY:

Q. Did you or your father make the contract? A. My father made the contract, at the first beginning of the contract.

Q. Were you present at the time the contract was made? A. Not when the first contract was made; no, sir.

Q. What do you mean by the first contract? A. We gave separate estimates. First we gave an estimate for painting the front; and afterwards we gave him an estimate for doing the bath rooms, and so on, down there; and after we got into the building then I gave him a separate price on lots of these articles.

Q. In other words, before you began your work you made these estimates, or as the work progressed? A. As the work progressed.

Q. State whether or not you had any conversations with Mr. King in respect to the matter of this work. A. Yes, sir——

Mr. HAMILTON: Wait one minute.

By Mr. BAILEY:

Q. What was that conversation?

Mr. HAMILTON: I object, on the ground that it is irrele-
175 vant and immaterial, and incompetent to bind the defendant d'Audigna.

A. When my father made the contract to do that front, that was the beginning of it. Why I talked to him about it was that he was kind of doubtful whether to start the work or not, and so I went down and saw Mr. King.

By Mr. BAILEY:

Q. Why was he doubtful? A. Because he did not know——

Mr. HAMILTON: I object to the witness testifying as to the mental operations of his father, as not proper testimony.

By Mr. BAILEY:

Q. He discussed it with him. Go ahead, that is all right. A. So I went down to see Mr. King myself. Mr. King told me of this lease. So when I came back—in fact my father told me about it before I went to see Mr. King. So when Mr. King said the work would be all right we went ahead and started it.

Q. What did Mr. King tell you?

Mr. HAMILTON: The same objection.

A. Mr. King told me about the allowance of this $5000 for repairs.

By Mr. BAILEY:

Q. This conversation took place between you and Mr. King prior to the time you began work? A. Right before we started the work.

Q. Will you please state how the different changes occurred in the contract as the work progressed? A. After we got down there and started on the front, then we started off on the bath rooms——

176 Q. Was that a separate contract? A. A separate contract. Then Mr. Key kept adding things and asking me the price of them. I gave him the prices. Those two things there, touching up on the front, and down in the bath room, I think are the only ones he did not get a price on—and a little pantry—but he got prices on every bit of that work. There was no contract made, however, except for those first two.

Q. In your copy of your contract with J. Barton Key, filed as exhibit No. 1, and attached to your bill of complaint, it states: "To painting and penciling front of Barton Hotel $275." Was — in the first estimate? A. That was in the first estimate.

Q. Was that work actually done? A. That was actually done.

Q. "Painting brick and woodwork on south wall, $50." Was that included in the first estimate? A. No, sir.

Q. That was not included in the first estimate? A. That was not included.

Q. Was the conversation had between you and Mr. King prior to that work being done? A. Prior to the starting of the work at all. I think that was the day before.

Q. Was the conversation had between you and Mr. King prior to the contract for doing this work, "Painting brick and woodwork on south wall, $50"? A. It was prior to our starting it, because he had the estimate before him.

177 Q. "Painting woodwork of 16 bath rooms, $64." Was that included in the first estimate? A. No, sir; that was the second estimate I spoke of.

Q. That estimate was made subsequent to your conversation with Mr. King? A. It was made afterwards.

Q. And did you actually do that work? A. Yes.

Q. "Varnishing interior of front windows, $50." When was that done? A. That was a separate agreement.

Q. Subsequent to your conversation with Mr. King? A. Yes, sir.

Q. In respect to the terms of the lease? A. Yes, sir.

Q. "Touching up and varnishing woodwork in rooms and halls of four stories, $200. When was that done? A. That was done afterwards.

Q. After your conversation with Mr. King? A. Yes, sir.

Q. Was the estimate made after this conversation with Mr. King? A. I don't think we made a written estimate for it.

Q. "Tinting ceiling and back walls of gallery and under gallery

and painting wood work in banquet hall, $133." Was that actually done? A. Yes, sir.

Q. When was the estimate rendered for that? A. He did not get an estimate for that. He only agreed to the price.

178 Q. Was the agreement for that work made subsequent to your conversation with Mr. King in regard to the terms of the lease? A. Yes, sir.

Q. "Tinting ceilings and varnishing woodwork of four rooms north of banquet hall, $82." When was the estimate made for that? A. That was after my conversation with Mr. King.

Q. Did you actually do the work? A. Yes, sir.

Q. "Painting and enameling woodwork in southwest room, first floor, middle room and bath room, $40." When was that estimate made? A. That was after the conversation with Mr. King.

Q. Was that work actually done? A. Yes, sir.

Q. "Painting and enameling wood work in room north of entrance, $20." A. That was after the conversation.

Q. Was that work actually done? A. Yes, sir.

Q. "Kalsomining and painting wood work in pantry, $6." When was that estimate made? A. After the conversation with Mr. King.

Q. And that work was actually done? A. Yes, sir.

Q. "Painting wood work in rooms 35 and 36, first floor, three coats, $27." A. That was after the conversation with Mr. King.

Q. That work was actually done? A. Yes, sir.

179 Q. "Painting wood work in rooms adjoining bar and barber shop, $19." A. That was after the conversation.

Q. And the work was actually done? A. The work was actually done.

Q. "Cleaning off and painting bar fixtures four coats and painting wood work of bar, $68." A. That was after the conversation with Mr. King.

Q. Was that work actually done? A. Yes, sir.

Q. "Painting wood work in bath, first floor, $4.50." A. That was actually done, after the conversation.

Q. With Mr. King? A. With Mr. King.

Q. "Staining and varnishing floor and varnishing wood work in office, $34." When was that estimate? A. At the same time.

Q. After the conversation with Mr. King with respect to the terms of the lease? A. Yes.

Q. Was that actually done? A. Yes, sir.

Q. "Painting wood work in basement two coats, $27." When was that estimate made? A. At the same time.

Q. Was the estimate for the work made subsequent to your conversations? A. Yes, sir.

180 Q. And the work was actually done? A. Yes, sir.

Q. "Painting north wall, two coats and sign——"

Mr. HAMILTON: Who do you not ask him if he can swear to the items of his account; instead of taking up the time in this way.

By Mr. BAILEY:

Q. All of the estimates were made and submitted subsequent to

your conversation with Mr. King, with the exception of the two first items? A. With the exception of the two first items.

Q. I show you a total here of $1281.25, and credits as follows: $100 December 21, 1900; $100 January 1, 1901; $100 January 11, 1901; and $100 January 24, 1901; a credit of $400, leaving a balance of $881.25. A. Yes, sir.

Q. Is that correct? A. That is correct, sir.

Q. And that amount is still due? A. That amount is still due.

Q. Have you your books of account with you here? A. Yes, sir.

Q. Mr. Linskey, in order to have no confusion about the matter, was work begun on the first two items prior to the time you saw Mr. King? A. No, sir; I went down to see Mr. King before we started.

Q. Any work? A. Any work. I am not sure, but I think it was the day before, and it may possibly have been a couple of days before.

181 Q. Did you see Mr. Huyck around there while you were doing work? A. I saw Mr. Huyck. I could not say whether I have seen him inside, but I have seen him outside of the building. I have seen him right there at the door, because he was talking one day to me there, when we were working on the front.

Cross-examination.

By Mr. HAMILTON:

Q. Mr. Linskey, the itemized statement of this account which Mr. Bailey has called your attention to, is the itemized statement attached to the bill of complaint, is it not? A. Yes, sir.

Q. Is this statement made up from books kept by your firm? A. Yes, sir.

Q. Did you make it up? A. No, sir.

Q. You do not keep the books of your firm, do you? A. No, sir.

Q. You have no personal knowledge as to the state of this account on your books, as it appears on your books? A. Well, I have seen it on the books.

Q. You have looked it up on the books? A. Yes.

Q. You did not put the various items on the books yourself? A. No, sir, but I submitted the price.

Q. You submitted estimates for all the work you did there? A. Except the first two estimates. My father submitted them, but I was acquainted with it.

182 Q. Who did you submit those estimates to? A. Mr. Key.

Q. And the first two estimates were submitted to Mr. Key by your father? A. By my father.

Q. Those estimates were accepted, were they not? A. I don't know. I think they were accepted, as far as that is concerned.

Q. Were they not only accepted, but was not the work finally done according to the estimates? A. Yes.

Q. As I understand you, after the first two estimates had been made and accepted, and before you started the work, your father got you to go down to ask Mr. King if the payments would be all right? A. You misunderstood me. He did not get me to go. I went myself.

Q. You went down as the result of the conversation had with your father, to see what information you could get as to how Mr. Key was going to pay for this work? A. Yes, sir.

Q. You testified in your direct examination that separate estimates were given to him. I suppose you mean given to Mr. Key? A. Yes, sir.

Q. And these various items of work were estimated upon by you at Mr. Key's request? A. Yes, sir.

Q. And while you were at work on other estimates? A.
183 Yes, sir. Mr. Key generally asked me about what a thing would cost before we started, except as to one or two little things.

Q. After you told him did he not tell you to go on and do the work? A. Yes, sir, sometimes he would tell me to go ahead then, and sometimes maybe it would be the next day before he would tell me.

Q. You say you had no formal written contract for any of this work, but that it was all done under estimates given and accepted? A. Yes, sir.

EDWARD T. LINSKEY,
By the Examiner by Consent.

Subscribed and sworn to before me this — day of ——, A. D. 1906.

——— ———,
Examiner in Chancery.

184 *Testimony on Behalf of Defendant.*

Filed May 8, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 22963.

CHARLES A. LANGLEY
vs.
CECILIA C. D'AUDIGNE ET AL.

Equity. No. 23143.

JAMES LINSKEY ET AL.
vs.
CECILIA C. D'AUDIGNE ET AL.

Equity. No. 23,055.

JAMES LOCKHEAD
vs.
CECILIA C. D'AUDIGNE ET AL.

Met at the office of Hamilton, Colbert and Hamilton pursuant to notice to take testimony on behalf of the defendant Cecilia C. d'Audigne, Saturday May 4th, 1907, at 10:30 A. M.

Present on behalf of Complainants, A. A. Hoehling, Jr.

Present on behalf of Defendant Cecilia C. d'Audigne John J. Hamilton.

Whereupon JOHN J. HAMILTON, a witness on behalf of said defendant, being first duly sworn, testifies as follows:

I am one of the attorneys for the defendant Cecilia C. d'Audigne, and was acting in that capacity in 1900 and 1901, and am
185 familiar with the controversy out of which the liens which are sought to be enforced in these cases arose. I desire to offer in evidence the original lease between Henry May, attorney in fact for Cecilia C. d'Audigne and J. Barton Key, which is dated November 5, 1900. This lease provides, among other things, in the fifth paragraph thereof that no changes should be made in the construction of the Barton Hotel, or alterations of partitions or stairways made without the written consent of the landlord first had and obtained. After Mr. Key took possession of the hotel under the lease and when he was preparing to make certain repairs, he made written application to the landlord through Mr. J. V. N. Huyck, who was the agent, for leave to make certain alterations, and he accompanied that application with the written statement of the architect as to the repairs necessary to be made to suit Mr. Key's wishes, and he also accompanied it with a letter addressed to himself and authorizing the repairs to be made, which he desired to have the landlord execute in compliance with the terms of the lease. Those papers were turned over to me by Mr. Huyck, and I have held them ever since. In reply to Mr. Key's letter the landlord refused to give the written consent for the repairs desired to be made by Mr. Key, but we found afterwards that notwithstanding that refusal Mr. Key went on and made the repairs which he desired without the written consent of the landlord, and in violation of the terms of the lease. I offer in evidence the letter of Mr. Key to Mr. Huyck dated November 21, 1900, enclosing a letter to him of C. B. Keferstein, architect, dated November 21, 1900, and the form of consent which Mr. Key desired the landlord to sign, dated November 22, 1900. This
186 paper, as above stated, the landlord refused to sign.

Mr. HOEHLING: That declination was not in writing?

A. No.

Q. You now make a formal offer of these letters? A. Yes, I might say that my impression is that those letters were sent to Mr. Huyck by Mr. Key by a messenger, and not through the mail. Mr. Huyck thereupon immediately took the matter up with me and was instructed to refuse to sign the consent to the repairs which Mr. Key desired to make, and he afterwards returned the letters to me for safe keeping.

Mr. HOEHLING: To the offer of each and every of the letters above referred to by the witness counsel for complainant Charles A. Langley objects on the ground that the same are immaterial, incompetent and irrelevant, and purport to set forth a private transaction betwe-n Key and Huyck, the agent of the defendant d'Audigne, not claimed to have been brought in any way to the notice or attention of said complainant Langley, and therefore not being binding upon him. Said counsel further objects to so much of the above answer by said witness as states that notwithstanding the refusal the said Key thereafter made the repairs in violation of the fifth clause of

the lease, the same being a statement of a conclusion of law and not of fact. Motion will be made to strike it out.

Mr. BAILEY: Same objection on behalf of McCuen and Linskey and Son.

Mr. HAMILTON: I wish to state further that I have interviewed Mr. Huyck with a view of having him testify as to the communication of Mr. Key and of my instructions to him, refusing to
187 consent to the repairs desired, but Mr. Huyck claims that his physical condition is so bad that his physician has peremptorily ordered him not to testify in this case or to do anything that would tend to excite him, and for that reason I will not call him as a witness. I understand that he has been in very bad health for two or three years and has recently suffered a stroke of paralysis.

I desire to offer in evidence also the record in the case of Scott *vs.* Key, Equity No. 22,044, and particularly the pleadings showing the claim of Moses and Son against the funds in the hands of the receivers who were appointed by the Court to take charge of the Barton Hotel and to sell all of the interest of the lessee J. Barton Key, and also the pleadings showing the claim of the defendant Cecilia C. d'Audigne against the fund in the hands of the receivers on account of rent, and also the Auditor's report showing distribution of the amount realized by the receivers from running the Hotel, which they did under order of court for several months, and from sale of the tenant's property on the premises. In offering this Auditor's report I wish to say that I have not been able to find it among the records, but we have already stipulated as to the amount of the claim of Moses and Son, and its allowance as a first lien against the funds in the hands of the receivers, and as to the amount that was finally allowed the landlord on account of rent, which was $935.91.

Cross-examination by Mr. HOEHLING:

Q. From whom did you obtain the original lease agreement which you have offered in evidence? A. According to my best
188 recollection this lease was prepared in duplicate by me, one copy to be kept by the landlord and one by the tenant. After its execution by the tenant, my recollection is that Mr. Huyck held it for a little while, but for the past four or five years it has been in my possession.

Q. You obtained it from him? A. Yes.

Q. That lease was not recorded, was it Mr. Hamilton? A. No.

Q. So that upon its execution, and as claimed by the defendant in her answer, the lease was in the private possession of her agent, Mr. Huyck? A. Yes, sir.

Q. Referring now to the letters that you have mentioned in your statement, in respect of desire to repair, &c., on the property, I understand you to say that you instructed Mr. Huyck to refuse the permission requested by Key? A. Possibly I should say that I advised him not to consent to it. When the letters were sent to Mr. Huyck for signature, he immediately consulted me as to whether the landlord should consent, and I advised him not to do it.

Q. Whether he so replied to Mr. Key I assume you have no personal knowledge? A. I have no personal knowledge, only what he told me. I have no reason to believe though that he did not carry out my advice or instructions in the matter.

Q. Nor have you any reason as to whether he did or not? A. I say I have no personal knowledge because I did not go with him to Mr. Key, or see Mr. Key about the matter myself.

189 Q. So that, as I understand you, Mr. Huyck consulted you in regard to the matter, and you personally advised him what you thought he should do, namely, to refuse to consent. A. I advised him what he should do, not what I thought he should do.

Q. That was your advice to him? A. Yes, sir. I know that advice was carried out, from the fact that the correspondence relating to that matter was very shortly afterwards, as my recollection serves me now, returned to me, including the letter which Mr. Key desired to have the landlord sign, which letter was unsigned and is unsigned now.

Q. Before giving your advice to Mr. Huyck, did you submit the matter to the defendant d'Audigne for her action? A. I did not.

Q. Did you so submit to Mr. Henry May, her attorney in fact. A. I did not, but my impression is that Mr.——

Mr. HOEHLING: I object to your impression.

A. I did not but Mr. Huyck did.

Q. Were you present when he did? A. No.

Mr. HOEHLING: I give notice that I shall move to strike out the last answer as to what Mr. Huyck did not in the presence of the witness.

Mr. HAMILTON: My recollection about the matter is that when Mr. Huyck called on me for advice, he stated that he had seen him and Mr. May objected to signing the letter. That is the only information I have on the subject.

Mr. HOEHLING: Last answer objected to, and motion made to strike it out as being hearsay.

190 Mr. HAMILTON: I wish to say in further explanation of the letter sent by Mr. Key to Mr. Huyck to be signed by the landlord that that letter was dictated by Mr. Key or someone under his direction. It has in lead pencil in one corner "Refused J. V. N. Huyck." I don't know anything about that endorsement, whether Mr. Huyck put it on there or not.

Mr. HOEHLING: Is it not a fact, Mr. Hamilton, that at the time of the date of the correspondence to which you have just referred, the repairs on the Hotel Barton property and which are embraced in the liens, that some of them were well under way.

A. I have not the slightest knowledge on the subject. I never was in the hotel or at the hotel during the time that any of the repairs were being made.

Q. Have you any independent recollection as to the time of the transaction embraced in the correspondence referred to other than the dates appearing upon each of the letters to identify by? A.

I can't say that I have. I know that Mr. Huyck consulted me about the date of these letters concerning the matter contained in the correspondence but I have no independent recollection of the exact time.

Q. Do you know when the Hotel Barton opened up for business? A. You mean under Mr. Key?

Q. Yes. A. I can't answer positively as to that, but my recollection is that it was sometime in December.

Q. Assuming that Mr. Huyck consulted you with reference to the letters from Key already referred to, at or about the time of the date of those letters, when did you give him advice as to the
191 answer he should make? A. Immediately.

Q. Did he call to see you in person about the matter? A. yes.

Q. And you gave him verbal instructions? A. Yes, sir.

I wish to state further in connection with my testimony that the petition filed by the landlord in the case of Scott *vs.* Key, Equity 22,044, for allowance of the landlord's claim on account of rent, claims rent from the first day of January, 1901, the fact being that the rent for December, 1900, was paid by Mr. Key and the rent for November, 1900, was not paid, but by a verbal arrangement between Mr. Key and the landlord's agent, that month's rent was allowed to Key on account of the repairs which he was expecting to make. That allowance was made under the provisions of paragraph five of the lease.

Mr. HOEHLING: In making the statement which you have just given, I notice that you have read it, or read parts of it, from a carbon copy of an unsigned petition, supposed to have been filed by Henry May in the case of Scott *vs.* Key, and which carbon copy does not contain any statement that the verbal arrangement with Key in regard to one month's rent had relation to the repairs made by him under the fifth paragraph of the lease. Now in making that statement and making the statement that you have just made, are you making it from hearsay or have you any personal knowledge whatever in regard to it?

A. I prepared the original petition in the case of Scott *vs.* Key for allowance of rent, and because of that fact I had to
192 obtain from Mr. Huyck, who was the agent of the landlord, for purposes of collecting the rent, an exact statement of the rent due and the rent that had been paid. My recollection now is that Mr. Huyck advised me as to the allowance of the November rent to Key, and his statement sent me showed that Key had paid the December rent. That is about the only information I have on the subject.

Q. And your information, according to your statement, was that Mr. Huyck allowed him the November rent on account of the repairs made by him under the fifth clause of the lease? A. Exactly.

JOHN J. HAMILTON.

Subscribed and sworn to before me this 8th day of May, A. D. 1907. EDMUND BRADY, *Examiner.*

I, Edmund Brady, an Examiner in Chancery, in and for the District of Columbia, do hereby certify, that the foregoing and annexed deposition was taken down in shorthand at the time and place set forth in the caption thereof from the oral statement of the witness then and there produced before me, said witness having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause; that thereafter the said deposition was reduced to typewriting under my personal supervision, was read over by the witness and by him subscribed in my presence.

I further certify that I am not of counsel in said cause, or otherwise interested therein, and I return said deposition to the Court for such action as to the Court may seem proper.

EDMUND BRADY, *Examiner.*

193 *Testimony on Behalf of Complainant.*

Filed May 9, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 23055.

JAMES LOCKHEAD
vs.
CECELIA C. D'ANDIGNA ET AL.

WASHINGTON, D. C.,
SATURDAY, *April* 13, 1907—3 p. m.

The parties met at the office of the Examiner.

Present for complainant, Mr. Charles W. Fitts.

Present for defendant, Mr. John Hamilton.

Present on behalf of Charles A. Langley, Complainant in Equity Cause No. 22,963 consolidated with the above, A. A. Hoehling.

Mr. FITTS: Will you swear Mr. Lockhead, Mr. Examiner?

Whereupon JAMES LOCKHEAD, the complainant, being duly sworn as a witness for the complainant, was examined by

Mr. FITTS:

Q. Mr. Lockhead, you are the Complainant in this Cause of Lockhead against Cecelia C. d'Andigna? A. Yes, sir.

Q. Did you ever perform any work on what was known and named in the Bill of Complaint as the Barton Hotel? A. Yes, sir.

Q. At whose instance did you perform that work? A. Mr. Barton Key;—J. Barton Key. The other man's name was Scott,
194 but my business was done with J. Barton Key. I only went into the room and spoke to Mr. Scott.

Q. Did you have a contract in regard to the work. A. Yes, sir; I had a contract to remodel the hotel.

Q. To remodel in what respect? A. To put in new bath tubs, new closets and plumbing in general.

Q. You say that you had a contract in regard to that work? A. Yes, sir; I had a contract.

Q. With whom? A. It was made in the name of Key and Scott.

Mr. HOEHLING: Let him identify it.

Mr. FITS:

Q. Is that a copy? A. It is a copy of it.

Witness identifies Exhibit "A" attached to the Bill as being a copy of his contract.

Q. Can you state the amount of that contract? A. Twenty seven hundred—something—I forget the items.

Q. Did you receive any part of the contract price? A. I refused to do the work until arrangements was made to deliver me $500. I would not have commenced the work until I got it.

Q. How much did you receive? A. For two weeks at the end of each week I got $500; for the second week $250 and for the third week I got $200.

Q. Is this paper which I now exhibit to you a true statement of the credits, and the amount due under the contract? A. Yes, sir; that is a true statement.

195 Mr. HOEHLING: What is the balance called for above?

A. The balance is here at the bottom—$1,417.76, and includes items for extra work.

Q. For extra work? A. Yes sir.

Q. In your preliminary conversation with Mr. Key was there anything said in regard to who had a lease, or if there was——

Mr. HAMILTON: I object to any testimony as to preliminary conversations between this witness and Mr. Key, which ultimately culminated in a written contract as being irrelevant, immaterial and incompetent.

A. He spoke about a lease. He said he had $5,000, and something about it coming out of the rent. I did not pay very much attention to it.

Q. Who had a lease? A. I do not know whether it was in his name or whose.

Mr. HAMILTON: I object and move that the answer be stricken out for the reason above stated and for the reason that that portion of his answer which relates to the lease is incompetent because the lease is the best evidence of its contents.

Mr. FITTS:

Q. You state something about your being told that there was an agreement to apply a portion of the rent to repairs?

Mr. HAMILTON: Same objection.

A. Yes.

Q. That was said to you before this contract was entered into?
A. It was.
196. Q. I will ask if these representations formed any part of the reason for your entering into this contract?

Mr. HAMILTON: Objection.

A. It certainly did.
Q. Did Mr. Key say at the time with whom this agreement was made?

Mr. HAMILTON: I object for the reason that there is no agency shown between Mr. Key and defendant.

A. I could not say; I know though that he spoke a great deal about the lease.
Q. Do you know Mr. J. V. N. Huyck? A. I only know him by sight.
Q. During the time you was putting the repairs upon the property in question did you see Mr. Huyck in and around the premises? A. I never paid any particular attention to him, but he was there at different times. Yes sir: I have seen him there.
Mr. FITTS: I wish that you would identify this paper.
A. Yes sir; my clerk wrote it.
Q. Do you know whether it is correct? A. It is as correct as it is possible for me to make it.

Mr. Lockhead identifies Exhibit "B" to the Bill of Complaint.

Mr. HOEHLING:

Q. Mr. Lockhead, what period of time was covered by the work you did in the building. A. I do not know the dates; probably 35 or 40 days. No, not that many; probably about 25 and not more than 30 days. I should suppose a period of four or five weeks of work.
197 Q. During that period how many times did you see Mr. J. V. N. Huyck upon the premises while you were working there and did he on any occasion come on the inside of the building? A. I saw him come just as far as the door. I do not know that I paid any particular attention to him.
Mr. HOEHLING: Did I understand you to say that you saw him on the pavement?
A. He might have been all over the building. I never paid any attention to him I was running up and down the building as fast as I could.

Mr. HOEHLING:

Q. Mr. Lockhead, is this Exhibit "A" attached to your Bill of Complaint a copy of the contract you made for that work with J. Barton Key and Scott? A. I think it was.
Mr. HAMILTON: Did you make your contract for the extra work?
A. I did what work would have had to be done if Mr. Keys was in charge.
Mr. HAMILTON: You was carrying out your ordinary contract

and then he wanted something done he would simply direct you and you would do that extra work?

Q. Do you know of your own knowledge the connection Mr. Scott had with Mr. Key? A. Keys said that he was his partner.

Q. This account is attached to your Bill of Complaint marked "Exhibit C" which shows $1,417.76. That is the correct balance now due? A. It is correct as far as I can remember.

198 Q. You also show on this account two payments of $500 each; one of $250 and one of $200. From whom did you receive that money? A. I got it from Key. He gave me checks.

Q. His own checks? A. I wouldn't swear; I think they were signed by Scott.

Q. When was it that you asked and he told you that he had a lease on this hotel. A. It was on November 23, 1900.

Q. That is the day that you made your contract. A. Yes sir.

Q. Did he show you the lease? A. No sir.

Q. Did you make any demand? A. No sir; he simply told me that he had a lease on the premises which during its term provided that he might spend $5,000.00 on the preimses in the way of repairs that would be deducted from the rent.

Q. Did he tell you any of the other provisions in the lease? A. No, sir.

Q. Did you ever make any demand to know any of the other provisions in the lease? A. No sir; I thought I was demanding enough when I demanded notes for the balance of the account.

Q. Did you file your claim for the balance due with the Receiver to take charge of the Hotel Company. A. I do not think so. I gave it to Mr. Fitts. I simply left it with my attorney, and I do not know whether he filed it or not.

199 Q. I will ask you to state Mr. Lockhead what was the character of the work you did in the hotel for Mr. Keys. A. I think that I put in 18 or 20 bath tubs, and remodeled the plumbing in general.

Mr. FITTS: Mr. Lockhead there has been something said about the respective sums of these payments. I will ask you to give the matter careful consideration and tell me if you can whether or not these checks were given by Mr. Scott?

A. I could not tell you that. I could not say positively.

Q. I will ask you if you had any conversation in regard to this work?

Mr. HAMILTON: I object.

A. No, I did not have any conversation about the work, but I did about the notes.

Q. You say that the notes were to be given for the balance of the money due you on the contract. A. The notes were to be given for the balance of my contract.

Q. Were these notes to be signed by Mr. Scott? A. Mr. Scott was to give his notes for the balance.

Mr. HOEHLING:

Q. Was Mr. Key to endorse those notes? A. I do not know

whether he was to endorse them or not. Mr. Scott's notes would have been good enough for me without any endorsement.

Mr. HAMILTON: You simply — to Mr. Scott and Key for payment for the work done by you.

JAMES LOCKHEAD,
Signed by Examiner with Consent of Counsel.
CHARLES W. STETSON, *Examiner.*

200 *Stipulation.*

Mr. HOEHLING: It is stipulated and agreed of record between counsel that the Receivers appointed in Equity Cause No. 22,044 who took charge of the Barton Hotel, filed their report in said cause showing a net balance on hand, after closing the hotel of $2,309.80 for distribution, against which amount Moses and Sons claimed a first lien to the extent of $1,413.22 on account of furniture sold by said firm to J. Barton Key, the title to which, however, was to remain in said firm until paid for. That claim was sustained by the Auditor, and the exceptions in that behalf to the Auditor's Report were over-ruled, on February 9, 1903, and the Receivers were ordered to make distribution.

It is also stipulated that Henry May, Attorney in fact for Cecelia C. d'Audigne, the owner of the premises, filed an intervening petition in said Equity Cause No. 22,044 asserting a landlord's lien against the funds in the hands of the Receivers for the amount of the rent due her at the time of filing the Petition, on March 27, 1907, amounting to $1,875, and which at the time of the statement of the account before the Auditor amounted to $3,750. After the payment of the claim of Moses and Sons, as a prior lien, the sum of $935.91 remained for distribution and was distributed and paid by the Receivers, March 11, 1901, to said owner, Cecelia C. d'Audigne the same being paid on account of the rent that was due her under the said lease with J. Barton Key.

It is further agreed that the foregoing stipulation may be used in Equity Cause No. 22,963 wherein Charles A. Langley is complainant, and with which this cause is consolidated.

201 EXHIBITS TO DEFENDANT'S TESTIMONY.

The Shoreham, Washington, D. C., John T. Devine.

NOVEMBER 21, 1900.

Mr. J. V. N. Huyck, #1505 Pennsylvania Avenue N. W.

MY DEAR MR. HUYCK: Will you kindly obtain Col. May's signature to the accompanying letter to me and return the same to me at your earliest convenience, as I am anxious to begin the work immediately.

Very truly yours, JAS. BARTON KEY.

202 WASHINGTON, D. C., *Nov.* 21, 1900.

J. Barton Key, Esq., Washington, D. C.

DEAR SIR: In compliance with your instructions I propose *to* making the following changes to the hotel formerly known as the Wellington.

Will remove stone steps in front of main entrance; drop the main door and side lights to within three or four feet from pavement; drop the present floor in main lobby to this new height of front door step. Put in two flights of stairs between present first floor and the new entrance, thereby making the access from pavement to first floor inside of the house in an easy manner. Also to remove the wood partitions in present hall and put in wood columns and screen in its place. Also cut opening overlooking new vestibule in brick wall opposite present parlor entrance; these openings to be treated with balconies.

Very truly yours, C. B. KEFERSTEIN, *Architect.*

203 The Shoreham, Washington, D. C., John T. Devine.

NOVEMBER 22ND, 1900.

J. Barton Key, Esq., Washington, D. C.

MY DEAR SIR: In accordance with the stipulation contained in your lease of the property on 15th Street, recently known as the Wellington Hotel, I hereby grant my consent and approval to your alterations of the front or main entrance in accordance with the plan suggested in the letter (hereto attached) from the Architect C. B. Kerferstein; said alterations to cost in the neighborhood of one thousand dollars ($1,000). I also further grant my consent and approval to your placing new, modern open plumbing in the twenty-four bath rooms of the hotel, costing about twenty-seven hundred dollars ($2,700).

I further grant my consent and approval to your placing steam radiators in all the rooms not now supplied with the same and extra radiators in halls as many as may be necessary to heat the hotel, cost to be about two thousand and sixty dollars ($2,060). It is understood that this consent implies consent to do such cutting through walls, partitions or floors as may be necessary.

Yours very truly, ——— ———.

204 *Bill.*

Filed February 5, 1901.

In the Supreme Court of the District of Columbia.

JAMES P. SCOTT, Complainant,

vs.

JAMES BARTON KEY, Defendant.

To the Honorable the Associate Justice of the Supreme Court of the District of Columbia, holding an Equity Term:

Your complainant, James P. Scott, who sues in this action in his own right and in behalf of any and all other creditors of the above

named defendant, James Barton Key, who may seek relief by and contribute to the costs and expenses of these proceedings, respectfully shows:

1. Your complainant is a citizen of the United States and of the State of Pennsylvania, recently residing in Paris, and at present temporarily sojourning in the City of Washington, in the District of Columbia.

The defendant, James Barton Key, is a citizen of the United States, having his domicile in the City of Baltimore, in the State of Maryland.

2. That some time in November, A. D. 1900, the defendant represented to your complainant that he was about to embark in the enterprise of keeping a hotel in the City of Washington,
205 District of Columbia, and applied to this complainant for assistance in such regard, representing to your complainant that with such assistance as your complainant was able to and would extend to him, the defendant would be able to secure a lease of the premises situated at 723 15th Street, Northwest, in the city of Washington, formerly known as Welcker's Hotel and later as the Hotel Wellington.

3. Your complainant, being impressed with the representations made to him by said defendant, agreed, as requested, to become surety for the prompt payment of the rent of said premises under the contemplated lease, and also to advance from time to time as occasion might require sums of money, not to exceed $5,000 in the aggregate, for the purposes of necessary repairs and improvements to be made in and about said premises, it being understood by and between your complainant and said defendant that the said sums of money so advanced should be repaid out of a rebate which was to be allowed by the lessor to the lessee, and that in consideration of your complainant becoming surety for the prompt payment of the rent as aforesaid and the advancements of said sums of cash, this complainant should be entitled by his agent acting as treasurer or cashier, to handle all the receipts of said business, and to receive for his own use and benefit from the defendant one-half of the profits to be derived from the conduct of said business, it being further understood that except as above set forth, your complainant was not to be identified with or concerned in the conduct of said enter-
206 prise.

4. On or about the 5th day of November, 1900, said defendant did enter into a lease of the premises in question with one Cecilia d'Audigna, acting through and by Henry May her attorney in fact, which said lease granted to the defendant the use and occupation of the premises in question for a period of five years to begin on the 1st day of December, 1900, the rent reserved being the sum of $7,500 per annum, payable monthly in advance at the rate of $625 per month, with a rebate to the lessee on account of improvements made and to be made in and about said premises of the sum of $5000, to be deducted from the said rent reserved at the rate of $1,000 per annum; that, in accordance with the agreement above set forth, this complainant did become surety upon said lease for the prompt payment of the rent reserved and did further advance the

said sum of $5,000 in cash, to pay for the necessary improvements and repairs to said premises; that notwithstanding your complainant had thus fully complied with his obligations under said agreement, he has, at the instance and request and as the result of the importunities of the defendant, advanced to said defendant to be by him applied in the stocking and equipping of the premises in question and the preparation of the same for the reception of guests and for and on account of the conducting of the same as a hotel, further sums of money, aggregating, in addition to the sum of $5,000 above set forth, the further sum of about $3,000, making a total of cash advanced of about $8,000, and has also from time to time,
207 at the instance and request of said defendant, endorsed said defendant's promissory notes in various sums, the total amount of said notes which have been discounted or otherwise disposed of by said defendant aggregating, as this complainant believes, approximately $2,000.

5. For the purpose of carrying on the business of a hotel in the premises aforesaid, extensive improvements and repairs, both of the hotel property itself and of the contents thereof, were made by the said defendant, who used for such purposes in a large measure the cash furnished by your complainant above referred to. Your complainant is informed and believes and therefore avers that notwithstanding the large payment of cash on such accounts, that there is still due and owing from said defendant to builders and material men, to upholsterers and decorators, and to dealers in supplies of various sorts and kinds, considerable sums of money, aggregating, as your complainant believes, the further sum of $10,000, and that many of said creditors insist upon immediate payment of the amount due to them.

6. Your complainant avers that some time during the month of December, 1900, the said premises being in fit condition, were opened by said defendant as a hotel under the name of "Barton's," and since such opening it has, until the present time, been conducted by said defendant as a hotel, but notwithstanding the distinct agreement between defendant and your complainant that the latter, by his agent acting as treasurer or trustee, should handle the receipts of said business, the said defendant has not permitted the
208 same to be done, nor has he at any time rendered to your complainant any account of the sums received in the course of such business nor of the disposition made thereof, but, on the contrary, although often requested so to do, has refrained from making such accounting, and has kept this complainant in the dark as to the financial condition of said business.

7. Your complainant avers that said defendant has failed and neglected to pay out of said receipts the rent for said premises for the months of January and February, 1901, as will more fully appear from a letter this day received from J. V. N. Huyck, a real estate broker having charge of the collection of said rents for the lessor, which said letter and its enclosure is hereto annexed, made a part hereof, and marked "Exhibits A and B," respectively.

Complainant further avers that defendant has neglected for several

weeks past to pay to the employees of said hotel their respective wages and has likewise neglected to pay to the market-men and to supply-men of various sorts the amounts which have become due and owing to them.

8. The complainant avers that the defendant is lacking in natural ability and unfit by training for the management of said business; that he is without means to defray the many obligations which he has incurred, is in a bad state of health, and has left this jurisdiction; that the hotel is without proper supplies requisite and necessary to enable the business to be further conducted; that the servants and employees are clamoring for their wages and the dealers in
209 market and other supplies demand immediate payment; that the entrances and corridors of the building are obstructed by creditors clamoring for payment and they are threatening immediate legal proceedings.

9. The complainant is informed and believes and therefore causes the Court to be informed that the business of a hotel, if properly conducted in and upon the premises aforesaid would, by reason of the favorable location of said premises, be lucrative and productive of much profit; that if attachments and other processes at law be levied upon the said premises and contents thereof at the instance of warring creditors in a race of diligence, the said property and all the value that may be therein will be dissipated and wasted to the great detriment not only of your complainant but of all other creditors who may have claims against the same.

Wherefore, for the purpose of preserving the said property and business, and for the purpose of having the said business temporarily, at least, conducted in a proper and business-like manner, and for the preservation of the assets of said defendant for the benefit of all creditors who may seek to avail themselves of the relief afforded by this bill, your complainant prays that a receiver may be appointed who shall forthwith take possession of said premises and of the leasehold interest of the defendant therein and of all of the contents of said premises by whatever name and description the same may be designated, and to hold the same until the further order of this Court, and to continue the said business upon such terms and upon such directions as this honorable Court may from
210 time to time devise and give; and ultimately to wind up the said business and to make such sale or other disposition of the said leasehold interest in said premises and of the business conducted therein and of the assets and properties belonging to said defendant and found upon said premises, as this honorable Court shall direct.

To the end therefore that said defendant may be restrained and enjoined from disposing of the said leasehold interest in said premises, or of any interest therein, and may be further restrained and enjoined from disposing of any of the assets of said business or contents of the premises aforesaid and that said defendant may render an accounting to your claimant, and for such and other relief as to this honorable Court may seem proper, your complainant prays that a gracious writ of subpœna may be issued out of this honorable Court, addressed to this defendant, James Barton Key, requiring

and commanding him to appear herein at a day to be fixed by this court to show cause why he should not be perpetually enjoined and restrained and why a receiver should not be appointed as prayed.

And complainant will ever pray, &c., &c., &c.

JAMES P. SCOTT.

F. D. McKENNEY,
J. S. FLANNERY,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, *ss:*

I, James P. Scott, being first duly sworn, do depose and say
211 that I have read over the foregoing and annexed bill of complaint and know the contents thereof and that the statements therein contained made of my own knowledge are true and those made upon information and belief I believe to be true.

JAMES P. SCOTT.

Subscribed and sworn to before me this 4th day of February, A. D., 1900.

AYLETT T. HOLTZMAN,
Notary Public, D. C.

212 EXHIBIT "A."

Office of J. V. N. Huyck, Real Estate Broker,
1505 Pa. Ave., N. W.

WASHINGTON, D. C., *Feb.* 2, 1901.

DEAR SIR: I think it only due that I should notify you that the rent for the Barton Hotel has not been paid for the months of January and February, as will appear from a statement enclosed herewith.

This information is given simply because of my knowledge that you are surety on the bond of Mr. Key, and I wanted you to be fully advised as to all of the matters.

Yours very truly, J. V. N. HUYCK.

James P. Scott, Esq.

213 EXHIBIT "B."

WASHINGTON, D. C., *Feb.* 1*st*, 1901.

J. V. N. Huyck, Real Estate Broker, 1505 Pennsylvania Avenue, in Account with J. Barton Key, "Barton" Hotel.

1901.		
Jan. 1.	To rent of hotel for month ending Jan. 31st.....	$625.00
Feb. 1.	To rent of hotel for month ending Feb. 28th.....	625.00
		$1250.00

214 *Order Appointing Receivers.*

Filed February 5, 1901.

In the Supreme Court of the District of Columbia.

22044.

JAMES P. SCOTT, Complainant,
vs.
JAMES BARTON KEY, Defendant.

The above matter having come on to be heard upon bill of complaint, affidavits and exhibits filed in support thereof, and the same having been considered by the Court, it is this 5th day of February, A. D. 1901 Adjudged and ordered that James R. Keenan and Smith Thompson, Jr., be and are hereby appointed receivers of the leasehold interest of the defendant James Barton Key, in premises known as 723 15th St., N. W., and also of all the contents thereof, together with the entire assets, by whatever name or description they may be called or identified, of the hotel business known as "Barton's."

Said receivers shall qualify by giving a joint and several bond in the sum of Five Thousand dollars and shall forthwith take possession of said premises and contents thereof, and shall manage and direct the same to the best of their ability until the further order of the court; but said receivers shall not be either authorized or required to incur any indebtedness or expense on account thereof.

215 And said defendant, James Barton Key, is required to show cause on or before the 12th day of February, 1901, why the above order should not be made perpetual and why he should not be enjoined and restrained and why he should not be decreed to render an accounting as in said bill of complainant prayed.

A. C. BRADLEY,
Associate Justice, Supreme Court, D. C.

216 *Petition of Receivers.*

Filed February 12, 1901.

In the Supreme Court of the District of Columbia.

Equity. No. 22044.

JAMES P. SCOTT, Complainant,
vs.
JAMES BARTON KEY, Defendant.

To the Supreme Court of the District of Columbia:

The petition of James R. Keenan and Smith Thompson, Jr., Receivers respectfully shows to the Court:

That Henry May, attorney in fact for Cecelia C. d'Andigne of Paris, France on the 5th day of February, 1901, instituted against

the defendant in this cause by the name of J. Barton Key before A. S. Taylor a Justice of the Peace to obtain possession of premises No. 723 15th Street N. W., Washington City, District of Columbia formerly known as Welcker's Hotel and later as the Hotel Wellington and now known as the Hotel Barton because of the forfeiture of the lease under which the defendant holds the said Hotel for non-payment of rent, which said suit is returnable before said Justice of the Peace on the 13th day of February, 1901, at 10:00 o'clock A. M., a copy of the summons issued by the said Justice of the Peace in said cause is herewith filed and made a part hereof.

That the said lease of the said premises is for a period of
217 five (5) years commencing on the 1st day of December, 1900, the rent reserved being the sum of Seventy-five hundred ($7500) dollars per annum, payable monthly in advance at the rate of Six hundred and twenty-five ($625.00) dollars per month, with a rebate to the lessee on account of improvements made about said premises of the sum of Five thousand ($5000) dollars to be deducted from the said rent reserved at the rate of not more than One thousand ($1000) dollars per annum.

Your Receivers aver that the complainant James P. Scott is surety for the rent reserved in and by the said lease and that only the rent for the month of January, 1901, and the rent for the month of February, 1901, is unpaid and they are not advised whether said One thousand ($1000) dollars rebate is in terms to be deducted proportionately from each month's rent or at the end of any year, but they aver that there has been $8000 spent in said improvements and not more than $250 of rent is now due by reason thereof.

Your petitioners aver that prior to the commencement of the said landlord and tenant proceedings they were in possession of said Hotel by virtue of the authority of this Honorable Court and that the business of the Hotel which was in a chaotic state at the time they took possession is now in good shape and that in a reasonable time they believe they will be able to pay and discharge said rent and all future rent which may accrue.

Your petitioners further state that in their opinion the said leasehold is a valuable asset worth at least the sum of Five thousand ($5000) dollars and if said forfeiture which is purely tech-
218 nical is not relieved against great loss will ensue to the creditors and those interested in realizing from the said Hotel and property about the same in charge of the said Receivers. Your Receivers are advised that said landlord has a tacit lien upon the said tenant's goods and chattels in the premises for three months' rent and that the same may be enforced and is properly enforce-able in these proceedings and that there is sufficient personal property belonging to the said tenant in the premises, from the sale of which sufficient money will be realized to pay the said overdue rent and rent to accrue for a reasonable time in the future and therefore they say that the said landlord is protected not only by the said surety obligation, but by sufficient property in the Hotel to answer to any claim for rent. Inasmuch as the said property is in charge of your

Receivers as officers of this Honorable Court and also because the said Key is absent from the jurisdiction and will not in all probability defend the said action and because of the said technical forfeiture of the said lease by reason of said non-payment of rent, your Receivers and petitioners therefore pray:

1st. That due process may issue and be served upon the said Henry May commanding him to appear and answer the exigencies of this petition but not under oath, an oath being hereby expressly waived.

2. That said Henry May be enjoined and restrained from proceeding in the said landlord and tenant case to judgment against the said Key and be required to submit his claim for the
219 said rent to this Honorable Court.

3. That the said forfeiture of the said lease because of said nonpayment of said rent may be relieved against by this Honorable Court.

4. And for such other and further relief as the nature of the case may require.

JAS. R. KEENAN.
SMITH THOMPSON, JR.

E. H. THOMAS,
F. D. McKENNEY,
Solicitors for Receivers.

DISTRICT OF COLUMBIA, *ss:*

James R. Keenan and Smith Thompson, Jr., being duly sworn on oath say that they have read the above petition by them subscribed and know the contents thereof; and that the matters and things therein stated are true to the best of their knowledge, information and belief.

JAS. R. KEENAN.
SMITH THOMPSON, JR.

Subscribed and sworn to before me this — day of February, A. D., 1901.

[SEAL.]

—— ——.

220 *Order Continuing Receivers.*

Filed February 26, 1901.

In the Supreme Court of the District of Columbia.

In Equity. No. 22044.

JAMES P. SCOTT, Complainant,
vs.
JAMES BARTON KEY.

This cause having come on for further hearing upon complainant's bill of complaint and the rule to show cause heretofore issued and served upon defendant herein, and it appearing to the Court

that the defendant James Barton Key has been duly served with process and a copy of said rule to show cause, and that though said defendant appeared in open court both personally and by attorney upon the return day in said rule mentioned, no cause to the contrary has been shown,

Now therefore upon motion of Frederic K. McKenney, Esquire, solicitor for the complainant, Henry P. Blair, Esquire, solicitor for the defendant being present in open court and consenting thereto, It is adjudged, ordered and decreed this 26th day of February, A. D., 1901, that James R. Keenan and Smith Thompson, Jr., heretofore appointed herein as receivers with power and authority to take possession of the premises known as the hotel Barton, together with the contents thereunto belonging, and to continue and conduct in and upon said premises the business of a hotel,
221 be and they are hereby continued in office as such receivers until the further order of the court with full power to maintain possession of said premises and the contents thereof and to continue and conduct therein the business of an hotel and restaurant with power to pay rent and to contract for and purchase from day to day all supplies and such service as may be required and necessary for the proper conduct of such business.

And said defendant, his agents, employés, servants, and creditors and all other persons whatsoever be and they are hereby restrained and enjoined from molesting said receivers or either of them or in any wise interfering with them or either of them in or about the performance of their duties as such receivers and from in any wise interfering with the said premises or the possession or the contents thereof, or the business conducted and to be conducted therein.

A. C. BRADLEY, *Justice.*

Petition of Henry May to Intervene.

Filed March 27, 1901, Now for March 25.

In the Supreme Court of the District of Columbia.

Equity. No. 22044.

JAMES F. SCOTT
vs.
J. BARTON KEY.

222 Your petitioner Henry May asking leave of this Court to intervene in the above-entitled cause, states as follows:

First. He is a resident of the City of Washington, District of Columbia, and is the duly appointed attorney-in-fact for his sister, Cecilia C. d'Andigne, of Paris, the owner in fee simple of the property described in these proceedings as "Barton's Hotel," situated on Lots numbered Nine (9), Ten (10) and Eleven (11) in Davidson's subdivision of Square numbered Two Hundred and Twenty-two (222), and as such attorney-in-fact has the charge of

the real estate of said Cecilia C. d'Andgine, with power and authority to lease or rent the same, and to receive for said letting the rents and profits arising therefrom; that on the Fifth day of November, 1900, acting as attorney-in-fact as aforesaid, this petitioner leased the property above referred to to J. Barton Key, the defendant in this suit, for a term of five years, commencing the First day of November, 1900, at an annual rental of $7,500.00, payable in monthly instalments of $625.00, all of which will more fully appear by reference to said lease, a copy of which is hereto attached, marked "Exhibit A."

2nd. That the said lessee entered upon the possession of the Hotel under said lease as aforesaid, and remained in possession thereof until the 5th day of February A. D., 1901, when by an order in this cause passed the Receivers Thompson and Keenan were put in charge of said Hotel, with authority to run the same as a Hotel until

223 further ordered by this Court; that when said Receivers took possession of the Hotel rent was due to this petitioner from December First, 1900, which said rent has not been paid, and the rent due from the date of the appointment of said Receivers has not been paid, so that the rent of said Hotel from the First day of December down to the present time is still due to this petitioner. That under a verbal arrangement between this petitioner and the lessee, J. Barton Key, one month's rent was remitted to Key, so that the entire amount due under said lease for rent to March 31, 1901, is $1875.00, to which is to be added the rent for the current month, at the rate of $625.00; that by a petition filed in this cause by Smith Thompson, one of the Receivers above referred to, on March 20, 1901, it appears that there is in the hands of the Receivers the sum of $1,532.21 profits from said Hotel during the time which the same has been under their control. It further appears that by order passed on said petition on the 20th day of March, A. D., 1901, that the Receivers aforesaid are authorized to close the Hotel at once, and close the business heretofore carried on by them, and also ordered to sell the stock of wines, groceries and other supplies on hand. In said order it does not appear that any direction is given to the Receivers to apply said proceeds, or any part thereof, to the payment of rents, and in order to fully protect this petitioner in the matter of said rents, and in regard to his legal rights and liens as landlord, he asks permission to intervene in this cause.

The premises considered your petitioner therefore prays that he be allowed to intervene herein and

First. That by proper order the said Receivers shall be

224 directed to apply to the payment of the rents due to this petitioner the moneys now in hand, or which may be received from the sale of supplies now in said Hotel, or so much thereof as is sufficient, or may be in right and equity applied to said rents.

Second. That this petitioner be allowed to enforce his right to recover possession of said premises by proper proceedings at law, unaffected by these proceedings in equity, or any order made thereunder.

And that petitioner may have such other and further relief in the premises as may be necessary or proper.

GEORGE E. HAMILTON,
Att'y for Petitioner.

I do solemnly swear that I have read the foregoing Petition by me subscribed, and know the contents thereof; that the matters and things therein stated on my personal knowledge are true, and the matters and things therein stated on information and belief I believe to be true.

GEORGE E. HAMILTON.

Subscribed and sworn to before me this 25th day of March, A. D., 1901.

[SEAL.] LOUISE F. DYER,
Notary Public, D. C.

225 *Order Permitting Henry May to Intervene.*

Filed March 25, 1901.

In the Supreme Court of the District of Columbia.

Eq. No. 22044.

JAMES P. SCOTT
vs.
J. BARTON KEY.

Upon consideration of the petition of Henry May attorney in fact for Cecilia C. d'Andigne, filed herein, it is this 25th day of March 1901 ordered that said petitioner be and he hereby is allowed to intervene in this cause for the purposes set forth in his petition.

It is further ordered that the Receivers Thompson and Keenan show cause herein on the 29th day of March 1901 why the funds now in their hands should not be subjected to the payment of the rent now due to said petitioner, or that the petitioner be decreed to have a lien upon the personal property in said Barton's Hotel, including the property described in the petition filed herein by Smith Thompson Jr. one of the Receivers in this cause on the 20th day of March 1901. Provided a copy of this order be served upon said Receivers on or before the 26th day of March 1901.

A. C. BRADLEY, *Justice.*

226 *Decree Directing Sale of Good Will, &c.*

Filed April 6, 1901.

In the Supreme Court of the District of Columbia.

Equity. No. 22044.

JAMES P. SCOTT
vs.
JAMES BARTON KEY.

Upon consideration of the report of the Receivers filed herein on the 1st day of April, A. D. 1901, and the matter having been argued by counsel:

It is this 6th day of April, A. D., 1901, ordered, that said Receivers discontinue the employment of the engineer and night watchman and engage one man at $1.00 per day to take charge of said hotel during the night and day until the further order of the Court.

It is further ordered that the business of said hotel, its good-will and the goods and chattels connected therewith, and not the property of the lessor or owner of said hotel, be sold at public auction for cash to the highest bidder and the said Receivers are hereby ordered to advertise the same for a period of ten days in the Evening Star and Washington Post, newspapers printed and published in the District of Columbia, and in such other manner as to the said receivers may be deemed advantageous.

It is further ordered that any sale made under this decree shall be first confirmed by the Court.

227 It is further ordered, that any and all existing liens of the Landlord in or upon said property so ordered to be sold, shall be and they are hereby transferred to the proceeds to be derived from the sale of the same, and that all rights of said lessor under the lease on said premises are hereby preserved and said sale is made subject thereto.

A. C. BRADLEY, *Justice.*

Receivers' Report of Sale.

Filed April 20, 1901.

In the Supreme Court of the District of Columbia.

Equity. No. 22044.

JAMES P. SCOTT
vs.
JAMES BARTON KEY.

The Receivers, James R. Keenan and Smith Thompson, Jr., respectfully report to the Court as follows:

1. That in pursuance of the decree passed in the above entitled cause on the 6th day of April, A. D., 1901, directing the sale of the business, goodwill and chattels connected with the hotel, your Re-

ceivers did on the 18th day of April, A. D., 1901, offer for sale, at public auction, at 11 o'clock, on the premises, the above described property and sold the same to E. S. Clark for the sum of $3050.00 he being the highest bidder.

2. That said property was duly advertised as required
228 by said decree, copies of which are hereto attached and marked exhibits A and B.

3. That said sale was, as the Receivers verily believe, fairly conducted, in conformity with all the requirements of the said decree, made after due competition, and the price obtained most fair.

Wherefore your Receivers recommend that said sale be confirmed.

JAS. R. KEENAN.
SMITH THOMPSON, JR.

DISTRICT OF COLUMBIA, *ss:*

Smith Thompson, Jr., being first duly sworn, deposes and says, that he is one of the Receivers named in the foregoing report by them subscribed; that the things therein stated upon his personal knowledge are true and those stated upon information and belief he believes to be true.

SMITH THOMPSON, JR.

Subscribed and sworn to before me this 20th day of April, A. D., 1901.

[SEAL.] WALTER F. DONALDSON,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *ss:*

On this 20th day of April in the year of our Lord ane
229 thousand nine hundred and one before me, the subscriber, a Notary Public, in and for the District aforesaid, personally appeared Jas. R. Keenan, one of the receivers named in the foregoing report and made oath in due form of law that the things therein stated upon his personal knowledge are true and those stated upon information and belief, he believes to be true.

JAS. R. KEENAN.

Subscribed and sworn to before me.

[SEAL.] D. E. STEPHAN,
Notary Public.

EXHIBITS A AND B.

Auction Sales.

Future Days.

James W. Ratcliffe, Auctioneer.

Receivers' Sale of the good will, business and furniture (the furniture belonging to landlord not included) of the beautiful hotel, "The Bartons," located at 721 and 723 15th street northwest, containing single rooms and suites of rooms with parlor, bed room, and bath; all new plumbing and newly papered, with electric lights throughout the house, private dining rooms, large café and dining rooms, kitchen, storeroom and bar room, equipped with all modern improvements and appliances, complete in all appointments, and can be opened for business without delay.

230 The above to be sold as an entirety.

By virtue of a decree of the Supreme Court of the District of Columbia, passed in Equity Cause No. 22044, the undersigned, receivers, will offer for sale at public auction on the premises, on Thursday, April eighteenth, 1901, at eleven o'clock a. m., the good will, business and furniture (excepting that furniture owned by the landlord) of the Hotel "Bartons," located at 721 and 723 15th street northwest.

Terms: All cash. A deposit of $500.00 required at time of sale and balance to be paid within five days, otherwise the receivers reserve the right to resell the property at the cost of the defaulting purchaser, upon such terms and after such previous notice of said resale as they may deem proper.

Hotel open for inspection on and after Tuesday, the 9th of April, 1901, between the hours of 12 and 2 p. m.

SMITH THOMPSON, JR.,
Fendall Building, 344 D st. N. W.
JAMES R. KEENAN,
The Gordon Hotel, Receivers.

ap6-d&dps

Memorandum.

April 22, 1901.—Sale ratified *nisi.*

Order Finally Ratifying and Confirming Sale.

Filed May 14, 1901.

In the Supreme Court of the District of Columbia.

Equity. No. 22044.

JAMES P. SCOTT
vs.
JAMES BARTON KEY.

Upon motion of the Receivers and it appearing to the
231 Court that the order *nisi,* passed in this cause on the 22nd day of April, 1901, has been duly published as required by said

order, and no cause having been shown to the Court why the sale, by the said Receivers, of the certain chattels contained in the Hotel Barton, Nos. 721 and 723 15th Street, Northwest, should not be ratified and confirmed; it is this 14th day of May, A. D., 1901, ordered that the said sale, by the Receivers, of the said chattels in said Hotel Barton be, and the same is hereby, finally ratified and confirmed; and that James R. Keenan and Smith Thompson, Jr., receivers in this cause, be, and they are hereby, authorized to convey said chattels to E. S. Clark, the purchaser thereof.

A. C. BRADLEY, *Justice.*

Order Referring Cause to Auditor.

Filed June 3, 1901.

In the Supreme Court of the District of Columbia.

Equity. No. 22044.

JAMES P. SCOTT
vs.
JAMES BARTON KEY.

Upon consideration of the motion of W. B. Moses & Sons, to have a portion of the fund in the hands of the receivers in this cause ordered paid to them, and upon motion of said receivers it is, this 3d day of June, 1901, ordered that this cause be, and the same
232 is hereby, referred to the Auditor of the Court to state the account of the said receivers and a distribution of the fund in their hands, and whether there be any priorities upon said fund, and if so in favor of what party or parties they exist, and in what amount, with leave to the said Auditor to take such evidence in relation to the respective claims to said fund as any party claiming to be interested therein may offer.

A. C. BRADLEY, *Justice.*

O. K.
F. D. McKENNEY,
Sol'r for Compl't.

Order Directing Receivers to Deliver Possession, &c.

Filed June 3, 1901.

In the Supreme Court of the District of Columbia.

Eq. No. 22044.

JAMES P. SCOTT
vs.
JAMES BARTON KEY.

Upon motion of Henry May attorney in fact for Cecilia C. d'Audigne, the owner of the property known as Barton's Hotel, and

more particularly described in the proceedings had herein, it is this 3rd day of June 1901 ordered that James R. Keenan and Smith Thompson Jr. the Receivers appointed by this Court, be and they are hereby authorized and directed to turn over and deliver possession of said premises and the contents thereof to Henry
233 May attorney in fact for Cecilia C. d'Audigne the owner thereof. A. C. BRADLEY, *Justice.*

Order Overruling Exceptions to Auditor's Report, &c.

Filed February 10, 1903.

In the Supreme Court of the District of Columbia.

Equity. No. 22044.

JAMES P. SCOTT
vs.
JAMES B. KEY.

This cause coming on to be heard upon the report of the Auditor, and the exceptions filed thereto, and the matter having been presented to the court by counsel for all the parties in interest, it is this 10th day of February 1903, ordered that the said exceptions to the said report of the Auditor be, and they and each of them are, overruled and the said report of the Auditor be and it is hereby confirmed.

And it is further ordered that James R. Keenan and Smith Thompson, Jr., the receivers in this cause, are authorized to make distribution of the fund in their hands according to the said report of the Auditor. ASHLEY M. GOULD, *Justice.*

234 *Decree.*

Filed May 16, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 22963.

CHARLES A. LANGLEY
vs.
CECILIA C. D'AUDIGNE.

Equity. No. 23055.

JAMES LOCKHEAD
vs.
CECILIA C. D'AUDIGNE.

Equity. No. 23143.

JAMES LINSKEY ET AL.
vs.
CECILIA C. D'AUDIGNE.

These causes having been consolidated by order of this court, and coming on for final hearing upon the pleadings and proof, and hav-

ing been argued and submitted to the court, it is this 16th day of May, 1907, adjudged, ordered and decreed that the bill of complaint in each of said cases be and the same is hereby dismissed with costs.

ASHLEY M. GOULD, *Justice.*

From the foregoing decree, the complainant, Charles A. Langley, in Equity cause No. 22,963; the complainant, James Lockhead, in Equity cause No. 23,055; and the complainants, William H. McCuen and George R. Herbert, co-partners, trading as William
235 H. McCuen and Company; William H. McCuen; and James Linskey and Edward T. Linskey, co-partners, trading as James Linskey and Son, in Equity cause No. 23,143; in open court, pray an appeal to the Court of Appeals of the District of Columbia, and the same is allowed, and the penalty of joint or several appeal bond for costs is fixed at the sum of $100.00.

ASHLEY M. GOULD, *Justice.*

Supreme Court of the District of Columbia.

TUESDAY, June 4, 1907.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould, presiding.

* * * * * * *

No. 22963, Equity Docket 51.

CHARLES A. LANGLEY
vs.
CECILIA C. D'AUDIGNE ET AL.

Upon application in that behalf made herein, it is by the Court this 4th day of June, 1907, ordered that Charles A. Langley, complainant in Equity cause No. 22,963, James Lockhead, complainant in Equity cause No. 23,055, and William H. McCuen individually and William H. McCuen and George R. Herbert trading as William H. McCuen & Company and James Linsky and Edward T. Linskey trading as Linskey & Son, complainants in Equity cause No. 23,143 (said causes having been consolidated) be, and they hereby
236 are permitted to sever under the appeal to the Court of Appeals heretofore noted by them in open Court, from the other and several mechanic's lienors who were joined as parties defendants in any or either of said Equity causes above named, namely, Elmer H. Catlin trading as Elmer H. Catlin & Company, Charles A. Muddiman and Frederick W. Buddicks trading as Charles A. Muddiman & Company, Frederick W. Daw and Samuel M. Dixon trading as Daw & Dixon and William S. MacLeod, administrator of Catherine M. MacLeod.

ASHLEY M. GOULD, *Justice.*

O. K.
JOHN J. HAMILTON,
Att'y for Def't d'Audgine.

Memoranda.

June 4, 1907.—Appeal Bond approved and filed.
July 3, 1907.—Time in which to file Transcript of Record in Court of Appeals extended from time to time, to October 15th. 1907.

237 *Directions to Clerk for Preparation of Transcript of Record.*

Filed October 8, 1907.

In the Supreme Court of the District of Columbia.

Eq. No. 22963.

CHARLES A. LANGLEY, Complainant,
vs.
CECILIA C. D'ANDIGNA ET AL., Defendants.

Eq. No. 23055.

JAMES LOCKHEAD, Complainant,
vs.
CECILIA C. D'ANDIGNA ET AL., Defendants.

Eq. No. 23143.

JAMES LINSKEY ET AL., Complainants,
vs.
CECILIA C. D'ANDIGNA ET AL., Defendants.

The Clerk will please include in the record on appeal in the above-entitled equity causes, consolidated, the following papers:

Equity, No. 22963:

1. Bill of complaint, and Exhibits "A" and "B."
2. Answer of defendant, d'Andigna, and Exhibit No. 1, (Lease).
3. Replication to answer of defendant, d'Andigna.

238 4. Stipulation.

Equity No. 23055:

1. Bill of complaint, and Exhibits "D" and "E."
2. Answer of defendant, d'Andigna, (omitting copy of Exhibit, Lease).
3. Replication to answer of defendant, d'Andigna.
4. Order consolidating cause.

Equity No. 23143:

1. Bill of complaint, and Exhibits 1, 2, 3, 4, 5, 6, and 7.
2. Answer of defendant, d'Andigna, (omitting copy of Exhibit, Lease).
3. Replication to answer of defendant, d'Andigna.
4. Order consolidating cause.

Copy such parts of depositions, stipulations, and other evidence, both for complainants and the defendant, d'Andigna, as are indicated on the originals thereof on file.

Please incorporate in the record on appeal, (at request of defendant, d'Andigna,) the following pleadings found in the case of James P. Scott *vs.* James B. Key, Equity No. 22,044, which were offered in evidence in the Langley case.

Feb. 5th, 1901. Bill of Complaint.

Feb. 5th, 1901. Order appointing James B. Keenan and Smith Thompson, Jr., receivers.

Feb. 12th, 1901. Petition of receivers for rule against
239 Henry May, attorney-in-fact.

Feb. 26th, 1901. Order continuing receivership and injunction.

Mar. 27th, 1901. Petition of Henry May for leave to intervene (without exhibit,) and order granting leave to do so.

Apr. 6th, 1901. Decree for sale of good will &c., of Hotel Barton.

Apr. 20th, 1901. Report of sale by receivers.

MEMO.—Ratified *nisi* Apr. 22nd, 1901.

May 14th, 1901. Sale by receivers finally ratified.

June 3rd, 1901. Order referring cause to Auditor.

June 3rd, 1901. Order to receivers to deliver Hotel Barton to Owner.

Feb. 10th, 1903. Order overruling exceptions and ratifying Auditor's report.

Final decree, May 16, 1907, entered in said consolidated causes, dismissing the bills of complaint, and the appeal, in open court, noted thereon, and order fixing amount of appeal bond for costs.

Order of June 4, 1907, permitting severance on appeal.

MEMO.—Appeal bond for costs approved and filed, June 4, 1907.

A. A. HOEHLING, JR.,
E. S. BAILEY,
C. W. FITTS,
Att'ys for Compl'ts.

By A. A. H., JR.

6/15/07.

240 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 239, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript; in Cause No. 22963, Equity, wherein Charles A. Langley is complainant, and Cecelia C. d'Andigna, *et al.* are Defendants; also Cause No. 23055, Equity, wherein James Lockhead is complainant, and Cecelia G. d'Andigna, *et al.* are Defendants, and Cause No. 23143, Equity, wherein James Linskey, *et al.* are Complainants and Cecelia C. d'Audigna, *et al.* are Defendants; Consol-

idated, as the same remain upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 9th day of October, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

A true copy.
Attest:
JOHN R. YOUNG, *Clerk.*

241 Court of Appeals.

No. 1837.

CHARLES A. LANGLEY ET AL., Appellants,
vs.
CECILIA C. D'AUDIGNE ET AL., Appellees.

The Clerk will please *omit* from the print of record herein the following:

1. Certificate as to Notary, part of pp. 32 & 33.
2. Exhibits "A" "B" and "C" pp. 46-53, both inclusive, the same being deemed immaterial to the hearing of the case on its merits.

A. A. HOEHLING, JR.,
Att'y for Appellants.

Oct. 16, 1907.

(Endorsed:) No. 1837. Court of Appeals. Langley *et al. v.* d'Audigne *et al.* Appellants' Designation of parts of record to be omitted from print. Court of Appeals, District of Columbia, Filed Oct. 16, 1907. Henry W. Hodges, Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1837. Charles A. Langley *et al.*, appellants, *vs.* Cecelia C. d'Audigne. Court of Appeals, District of Columbia. Filed Oct. 14, 1907, Henry W. Hodges, clerk.

ADDITION TO RECORD PER STIPULATION OF COUNSEL.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1907.

No. 1837.

CHARLES A. LANGLEY ET AL., APPELLANTS,

vs.

CECELIA C. D'AUDIGNE.

FILED DECEMBER 5, 1907.

In the Court of Appeals of the District of Columbia.

No. 1837, October Term, 1907.

CHARLES A. LANGLEY ET AL., Appellants,
vs.
CECELIA C. D'AUDIGNE.

It is hereby agreed by counsel for appellants and by counsel for appellee, that, in equity cause No. 22,963, (Langley *vs.* d'Andigna *et al.*) complainant, under date April 25, 1902, filed replication to the answer of said defendant, d'Andigna; that the same, though designated below by appellants to be included in the record on appeal to this Court, (*R. 117.*) was inadvertently omitted therefrom; that a true copy of said replication is hereto attached; and that said copy may be added to the transcript of record now on file in the Court of Appeals, District of Columbia, the same to be deemed and treated, for all purposes, as a part of said record on appeal.

JOHN J. HAMILTON,
Attorney for Appellee.
A. A. HOEHLING, JR.,
Attorney for Appellants.

(Filed April 25, 1902.)

In the Supreme Court of the District of Columbia.

Equity. No. 22963.

CHARLES A. LANGLEY, Complainant,
vs.
CECILIA C. D'ANDIGNA, Formerly CECILIA C. MAY, ET AL., Defendants.

The complainant, above-named, hereby joins issue with the defendant, Cecilia C. d'Andigna, formerly Cecilia C. May, upon the answer filed by her herein.

A. A. HOEHLING, JR.,
Solicitor for Complainant.

[Endorsed:] No. 1837. Charles A. Langley *et al.*, appellants, *vs.* Cecelia C. d'Audigne. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Dec. 5, 1907. Henry W. Hodges, clerk.

IN THE

Court of Appeals, District of Columbia.

JANUARY TERM, 1908.

No. 1837.

CHARLES A. LANGLEY ET AL., APPELLANTS,

vs.

CECILIA C. D'AUDIGNE, APPELLEE.

BRIEF ON BEHALF OF APPELLEE.

GEORGE E. HAMILTON,
MICHAEL J. COLBERT,
JOHN W. YERKES,
JOHN J. HAMILTON,
Attorneys for Appellee.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

IN THE

Court of Appeals, District of Columbia.

JANUARY TERM, 1908.

No. 1837.

CHARLES A. LANGLEY ET AL., APPELLANTS,

vs.

CECILIA C. D'AUDIGNE, APPELLEE.

BRIEF ON BEHALF OF APPELLEE.

Statement of Case.

The appellants filed three separate suits in the lower court to enforce mechanics' liens filed by them against the property described as lots 9, 10, and 11, in square 222, in the city of Washington, District of Columbia, and improved by the hotel known as the Barton (Rec., pp. 2, 20, and 32). Said suits were afterwards consolidated and heard together (Rec., pp. 31 and 50). The liens were all filed against the appellee, who is the owner of said property, in an attempt to subject the fee-simple title of said property to the payment of claims for labor and materials alleged to have been furnished for the remodeling, reconstruction, and repairing of said hotel building, under contracts made by the different

claimants with J. Barton Key, who was the lessee of said hotel (Rec., pp. 8, 25, 43, and 44). One of the appellants also filed a lien against Key for the purpose of subjecting his interest in said property as tenant and lessee to the payment of his claim (Rec., p. 25).

The bills of complaint in each case are practically similar, except that in the Langley case the lessee, J. Barton Key, was not made a defendant, while in the other two cases he is named as a defendant. Each of the bills recites that the appellee is a resident of the city of Paris, France; that on or about November 1, 1900, she leased said property to J. Barton Key for the term of five years; and in consideration of said lease, and of the payment of the rental therein stipulated, it was provided in said lease that Key might make improvements, alterations, and repairs, to the extent of $5,000, which would be allowed for by the lessor, by a credit of $1,000 on the rent during each year of the term demised; and that improvements, alterations, and repairs made by the lessee in excess of $5,000 should be paid for by said lessee.

The bills further recite that during the latter part of November, 1900, the said appellee, through J. Barton Key, acting therein as her duly authorized agent, made and entered into certain contracts with the appellants for repairs and improvements to said hotel, and that in pursuance with said contracts the appellants entered upon and performed certain work and supplied certain material in the repair and improvement of said hotel; that some of the appellants received part payment of their bills from the lessee, Key, but the amounts claimed in the liens were still due and unpaid; that upon completion thereof the repairs and improvements were accepted by the appellee through her agent in that behalf, and that the premises have been greatly enhanced in value by reason of said improvements and repairs, and the appellee, in consequence thereof, is receiving large gains and profits from the rental of said property. The appellants claim that by reason of the statute they are entitled to en-

force their liens against the property, and they pray that if the amount of their liens be not paid by the appellee within a time to be fixed by the court that the said land and premises, with the title and interest of the appellee, be decreed to be sold, and the proceeds of sale be applied to the satisfaction of said liens. The Linskey bill also asks that the claims of the complainants in that case be declared to be a lien against the lease on said premises (Rec., p. 37).

The appellee filed practically the same answer to all three of said suits, and attached a copy of the lease to Key as an exhibit to said answer (Rec., pp. 8, 26, and 45). She avers that she received no notice whatever of the filing of the liens against her property until the several suits herein consolidated were filed to enforce the same. She admits that she was the owner of the property described in the bills of complaint, but avers that they were subject to certain encumbrances in the nature of deeds of trust which were of record long prior to the date of the transactions set forth in the bills of complaint. She avers that said property was for years prior to November 1, 1900, used for hotel purposes, and she denies that said premises at said date were in bad condition, and in need of repair, and generally unsuitable for the conduct of the hotel business therein. She denies that it was necessary for her to consent to the making of repairs in order to rent said property, and avers that said property was in first-class condition, ordinary wear and tear excepted, at the time of the giving of said lease, and that the condition of the premises as to repair bore no part or consideration in the agreement between Key and herself as to the amount of rent to be paid by him. She denies that either at or about the date of the lease, or subsequent thereto, she did remodel, refit, renovate or repair said property, or agree to do so in any degree whatever. She admits the execution of the lease to Key November 5, 1900, upon the terms and conditions more fully set forth in said lease. She avers that the fifth clause of said lease does not bear out the interpretation placed upon it by the complainants, and that said

clause related only to such extraordinary alterations and repairs which the lessee might make if he saw fit, but were to be made, if at all, only with the written consent of the lessor first had and obtained; that if the said extraordinary alterations and repairs were approved by the lessor, and should equal in value the sum of $5,000, then the lessee should be entitled to a deduction from the rent for said term at the rate of $1,000 per year, and that repairs and alterations in excess of $5,000 should be paid for by the lessee; that said lease also contained a provision for a renewal term of five years, at an annual rental of $8,000; that the provision in said lease relating to extraordinary alterations and repairs was based upon the fulfillment by the lessee of his agreement in its entirety, the desire of the lessor to have a permanent tenant being a moving consideration for the credit to be allowed the lessee. She avers, however, that the lessee did not keep and perform the conditions of the lease agreed to be kept and performed by him; that he did not obtain her consent in writing or otherwise to make extraordinary alterations, repairs, or improvements, and that he failed to pay the rent after December, 1900; that on February 5, 1901, the premises were taken possession of by receivers appointed by the equity court in the case of James P. Scott *vs.* J. Barton Key, equity No. 22044, and that they closed said hotel by order of court on March 20, 1901, sold out the entire interest of the lessee in the premises, including good will and personal property, which sale was ratified by order of May 14, 1901, and said receivers returned the premises to this defendant by direction of the court on June 3, 1901. That by reason of the default of the lessee appellee lost not only a permanent tenant and the rent of said premises for more than seven months, but she was called upon to expend large sums of money in the employment of counsel to protect her interests before the courts in the contest between Key and his creditors.

Appellee denies any knowledge of the making of contracts by appellants with Key for the repair of said premises, or

that Key was ever authorized to, or as a matter of fact did, enter into any of said contracts as her agent, or on her behalf; and she avers that the only relation ever existing between Key and herself was that of lessor and lessee, as shown by the terms of the lease; she avers on information and belief that the complainants contracted with said Key solely upon his individual responsibility, and not as the representative of appellee, or anyone else. She denies that she has been in possession of said premises since January 19, 1901, and receiving large gains therefrom. She avers that the record in equity cause No. 22044 shows that after said premises were taken possession of by the receivers, they were not turned back to her until June 3, 1901. That said record further shows that she received only $935.91 on account of rent for said premises, and she denies that said premises have been greatly enhanced in value, or that she is receiving a large income therefrom by reason of the improvements made thereon by the complainants, and she denies that there is any amount due from her to the complainants, or any of them.

A copy of the lease between the appellee and J. Barton Key will be found at page 13 of the record, and the fifth clause of said lease is the one which the appellants claim entitles them, subject to the interest of the appellee in said property, to the payment of their claims. The ninth clause of said lease provides that any failure or default by the lessee in the performance of any of the covenants contained in the lease shall, at the option of the lessor, work a forfeiture of the term thereby created, and the lessor shall have the right to re-enter upon and take possession of said premises; and it provides further that any waiver of any breach of any of the covenants of said lease shall not be deemed or held to be a waiver of any other or further breach of any of said covenants.

After said suits were at issue, it being conceded by the attorneys for all of the lienors that the limit of possible recovery under said several liens was the sum of $5,000, with interest and costs, it was stipulated that the sum of $7,000

should be deposited by the appellee to the credit of trustees, to be held to abide the result of said several suits, and the liens were thereupon released (Rec., p. 18). It will be observed that several of the lienors enumerated in said stipulation have abandoned their claims, and are not before this court on appeal.

Testimony having been taken on behalf of the appellants and the appellee, the cases were set down for final hearing, and a decree was passed on May 16, 1907 (Rec., p. 115) dismissing the bills of complaint in each case, with costs. From that decree appeal has been taken.

ARGUMENT.

I.

WITH WHOM WERE CONTRACTS FOR WORK ON HOTEL MADE?

It is alleged in the bills of complaint that the appellants contracted with the appellee, through her duly authorized agent, J. Barton Key, for the improvements and repairs made on the hotel by them. What is the evidence on this point?

It appears from the bills that the appellee was residing in Paris, France, at the time the repairs were being made; and none of the appellants pretend to have had any communication whatsoever with her in person. It appears from the evidence that all negotiations for the repairs were made with Key, and that none of the appellants ever charged their bills to the appellee, or ever made any attempt to present them for payment to her, or her attorney in fact, or her agent for the collection of rents. (See Langley's testimony, Record, pp. 56 to 58, 61, and 64; McCuen's testimony, pp. 70 and 72; Herbert's testimony, pp. 83 and 84; Edward T. Linskey's testimony, pp. 86 and 89, and Lockhead's testimony, pp. 95 and 96).

Linskey and Son and McCuen and Company made written contracts with Key (Rec., pp. 39 and 40).

Lockhead had a written contract with Key and Scott (Rec., p. 96), and it is stated in the mechanics' liens which were filed, that all of the contracts for work on the hotel were made with J. Barton Key.

Langley testifies that he was introduced to Key by a Major Ferguson, for whom he was doing some work; that Key then told him he had leased the hotel, and wanted to make certain improvements, and would like to talk to witness about them after he had received some plans from his architect (Rec., p. 52). That in a few days he went to the hotel and went over the building with Key, and gave him an estimate. That his first estimate was for about $1,000, but Key kept adding things to be done until it reached the amount of the bill rendered (Rec., p. 53).

William H. McCuen says that Mr. Huyck telephoned him that Key wanted him to do some work at the hotel, and he thereupon went to the hotel and made a contract with Key (Rec., p. 70).

George R. Herbert, who was McCuen's partner, however, says McCuen told him there was a telephone message at the office for some work to be done at the hotel, and for him to go down and see Mr. Key; that he went to the hotel, saw Key, made an estimate for him, and he signed the firm name to the contract (Rec., p. 83).

Edward T. Linskey says he and his father submitted estimates to Key for the work they did, and those estimates were accepted by Key (Rec., p. 89). He says Key kept adding things to the list, and asked witness for a price on them, and would then direct him to do the work, and in that manner their bill far exceeded the original estimate (Rec., pp. 87 and 90).

Lockhead says he had a contract with Key and one James P. Scott, whom Key said was his partner, to do certain work at the hotel (Rec., pp. 96 and 98).

II.

HOW WAS THE WORK TO BE PAID FOR AND BY WHOM?

All of the lienors rendered their bills to Key, and demanded payment from him. Langley's testimony (Rec., p. 56), Linskey and Son (Rec., p. 39), McCuen and Company (Rec., pp. 40, 41, and 42), Lockhead (Rec., pp. 96 and 97).

Langley says he did not expect to wait for his money to be paid out of any yearly credit that might be allowed Key under the lease. He expected Key to pay him for the work when it was completed (Rec., p. 59).

Linskey and Son received four payments of $100 each from Key on account of their bill (Rec., pp. 40 and 89).

McCuen and Company's contract called for the payment by Key of $1,060 in cash, and delivery by him of his two notes at four and six months, endorsed by James P. Scott, for the balance of $1,000 (Rec., p. 42). They actually received $500 in cash from Key, on account of the job (Rec., pp. 42 and 74), and demanded the notes, but did not get them (Rec., p. 73).

Lockhead received four payments in cash, aggregating $1,650 (Rec., pp. 22 and 96); he received checks from Key for that amount, but he thinks they were signed by Scott, whom Key told him was his partner (Rec., p. 98).

III.

WHAT PART DID LEASE PLAY IN MAKING OF CONTRACTS WITH APPELLANTS?

The bills of complaint allege that in consideration of the leasing of the hotel to Key, in its "then bad condition and want of repair" and *"in consideration for the payments of rental therein stipulated and reserved,"* the said lease pro-

vided that the lessee might make alterations and repairs to the extent of $5,000, which would be allowed for by the lessor out of the rent. A copy of said lease is attached to the answer of the appellee (Rec., p. 13), from which and from said answer it appears that said lease had no reference to the making of ordinary repairs and improvements, such as constituted most of the accounts covered by the liens sued on in these cases; but referred only to the *changes in the construction of the building or alterations of partitions or stairways,* which the lessee might or might not make, provided he first obtained the written consent of the lessor thereto.

It further appears from the lease, notwithstanding the provision relating to changes or alterations, that upon failure or default by the lessee, or any person claiming under him, to perform any of the covenants contained in the lease, the lessor should have the right to declare the lease forfeited, and the tenancy at an end, and be entitled thereupon to re-enter upon and take possession of said premises (Rec., p. 15).

In this connection let us inquire how the lease was terminated. It appears that on February 5, 1901, the equity court appointed receivers to take possession of the leasehold interest of the lessee in said hotel, at the suit of one James P. Scott, who had agreed to back him in said hotel enterprise (Rec., p. 105). Scott alleged in his bill that he advanced Key $8,000 in cash, and had endorsed notes for $2,000 more; that although Key had paid out money to contractors for work done at the hotel, there was still due to builders and material men, upholsterers, decorators, and dealers in supplies of various sorts and kinds, the further sum of $10,000, and that these men were insisting upon immediate payment; that the rent for two months was also unpaid; that Key was lacking in natural ability, and unfit by training to manage said building; that he was without means to pay the many obligations he had incurred, was in bad health, and had left the jurisdiction (Rec., p. 103). On

petition of the receivers (Rec., p. 105) the receivership was continued, and the landlord was restrained from prosecuting landlord and tenant proceedings against said Key to recover possession of said hotel (Rec., p. 107). Thereupon the landlord was permitted to intervene in said case for the purpose of obtaining payment of the rent due (Rec., p. 110). Under order of the court, the business, good will, and all goods and chattels in the hotel, not the property of the lessor, were sold by the receivers (Rec., p. 111), and they were directed by order passed June 3, 1901, to deliver possession of the hotel to Henry May, as attorney-in-fact for appellee (Rec., p. 114). In the settlement of the receivers' account in that case, the landlord received the sum of $935.91, on account of the rent due from January to June 1901, both inclusive, and amounting to $3,750 (Rec., p. 99). It also appears that the rent for November, 1900, was remitted (Rec., p. 109). The appellant Langley offered in evidence under stipulation, but subject to appellee's objection as to competency, relevancy, and materiality, a copy of a lease made by appellee with a corporation known as The Barton Company, for the rental of said hotel for a term of five years from August 1, 1901, at a rent of $625 per month (Rec., p. 65), but under which said lease rent was only paid to May 31, 1904 (Rec., p. 68). It thus appears that for the year beginning November 1, 1900, and ending November 1, 1901, the appellee received from all sources, on account of rent for said hotel, the sum of $3,435.91, when she should have received, under the lease with Key if he had carried out his agreement, the sum of $7,500; she was thus subjected to a total loss for the first year of the sum of $4,064.09, not including attorneys' charges which she had to pay for defending her interests.

It is claimed by appellants that when they made their contracts with Key, they had in view the clause of the lease allowing a credit of $1,000 a year on account of repairs to be made, although that clause related solely to alterations of partitions or stairways, which were termed extraordinary

repairs; yet at the request of the lessee they went ahead and made a large number of ordinary repairs usually made in such buildings to suit the ideas or fancies of the tenant. They knew that under the law the tenant had to pay for all such repairs, and they looked to him for payment. None of them agreed or expected to wait five years before receiving payment, and it is unexplained how they intended to make a credit from the landlord of $5,000, at the rate of $1,000 a year, sufficient to pay bills which amounted to over $12,000.

If the appellants contracted with Key on the strength of the provision of the lease now under discussion, they contracted subject to the other covenants in the lease; and it is no defense now to say that the lease was unrecorded and they were not advised of all of its terms. They should have made it their business to find out its terms, and the extent of Key's authority and title thereunder.

Hoffman *vs.* McColgan, 81 Md., 390.
Waterman *vs.* Stout, 38 Neb., 396.

If they so contracted they contracted subject to that other covenant of the lease which provided for its forfeiture and termination at any time upon the default of Key in the payment of rent or the observance of the other covenants of the lease. The lease, therefore, having been terminated during the first year of the term, not by the act of the landlord, but through the default of the lessee, and the lessee's interest having been sold, the appellants' liens became valueless, because the covenant in the lease relied on by them was unquestionably predicated upon the assumption, and was subject to the condition that the tenant would live up to his contract and pay the rent therein reserved for the term agreed upon.

We respectfully insist that the appellants are unsupported either by the facts or the law in the interpretation they have attempted to place upon the transactions disclosed by the record. Let us examine the evidence to see what part, if any, the provisions of the lease played in the making of the con-

tracts with appellants. We have heretofore referred to the testimony showing with whom the contracts were made for the work done by appellants; and from that testimony it indisputably appears that all of them contracted solely with Key, on his own account, and not as agent in any manner for appellee, and that all of them looked solely to him, or his backer, James P. Scott, for payment. Attempt was made by appellants to show that Key advised them of the fifth paragraph of the lease, and also that Huyck, the real-estate agent who collected the rent from the hotel, informed them to the same effect. This testimony was objected to on the ground that it concerned the contents of a written instrument, and because there was no proof of agency between Key and the appellee or Huyck and the appellee so as to render their statements binding on her. We think these objections were well taken; but even if they were not it would make no difference. Being advised as to the fifth clause, we must assume that they knew that it related only to the making of alterations of partitions or stairways, and that the allowance by the landlord on account of such extraordinary repairs was conditioned upon the written consent of the landlord being obtained to the making of such extraordinary repairs, and the observance of the other covenants of the lease by the lessee; yet not one of them made any attempt to ascertain if the written consent of the landlord had been obtained, nor did they ask anything about it. They did not even make a demand or request to see the lease, although they must have known that it contained provisions for the protection of the landlord's interest.

Langley says that after he had agreed to do certain work Key told him about the provision of his lease relating to repairs. He further said, "I know we discussed his lease before I started to do anything (Rec., p. 55)." He also stated that Huyck practically verified Key's statement as to the lease, and that Huyck's statement "was to the effect that the lease gave the party leasing, Mr. Key, the right and privilege of spending $5,000 upon the property in the way of improve-

ments, which the owner allowed him to take at the rate of $1,000 per year out of the rent of the buildings" (Rec., p. 55).

On cross-examination the witness testified on this subject as follows:

> "Q. Did you not know at that time that the lease provided that no repairs of any permanent nature should be made by the tenant, without the consent in writing first had and obtained from the owner?
> "A. I do not think that I was informed of that particular phrase of the lease.
> "Q. You did not expect to be paid out of the credit that would be made to Mr. Key on the rent?
> "A. I did not expect to wait for my payment, to get it in that way.
> "Q. You expected Mr. Key to pay you for the work when it was done?
> "A. Yes."

McCuen, after stating that Huyck had phoned him to come down to see Key about doing some work, says (Rec., p. 70) "So I went over to his (Key's) office in the Wellington, which was afterwards know as the Barton, I think, and signed a contract there with Mr. Key, and then I came back and told Mr. Huyck what I had done, and he said"—— Counsel for appellee here objected to witness's stating what Huyck had said, and witness continued: "I told him what I had done, and he said that was all right, that they were perfectly good, and they had a thousand dollars a year there for five years to go on the improvements on the building." The persons referred to by witness as "they" are Key and James P. Scott, because the witness's contract called for two cash payments and two notes to be endorsed by Scott; he demanded the notes, but Key put him off by saying that as soon as he could get Scott sober he would get these matters fixed up; that it was the supposition that Scott was Key's backer, and the man who was loaning him money (Rec., p. 73). This witness knew nothing about the terms of the

lease until *after* he had signed the contract with Key, and then he asked Huyck who Key was, and if Huyck thought he would get his money (Rec., p. 75).

Herbert testified to the same effect. He says that *after* signing the contract with Key he had a talk with Mr. King, who was then in the employ of Huyck. "I asked him about what the prospects were of getting payment there. We did not know Mr. Key very well, and we acted more on the strength of Mr. Huyck and Mr. King, as agents" (Rec., p. 83). King then told witness about the lease.

Edward T. Linskey says his father gave Key an estimate for the first work done by his firm, and after giving it he told witness he was doubtful about it and did not know whether to start the work or not. Witness thereupon went to see King to get his advice and King told him about the lease. Witness continued, "So when Mr. King said the work would be all right, we went ahead and started it" (Rec., p. 86).

Lockhead made his contract with Key and Scott, and during the conversation at which the contract was made, Key said something about the lease. "He spoke about the lease. He said he had $5,000, something about it coming out of the rent. *I did not pay very much attention to it*" (Rec., p. 96). He was cross-examined on this point as follows:

> "Q. When was it that you asked and he told you that he had a lease on this hotel?
> "A. It was on November 23, 1900.
> "Q. That is the date you made your contract?
> "A. Yes, sir.
> "Q. Did he show you the lease?
> "A. No, sir.
> "Q. Did you make any demand?
> "A. No, sir. He simply told me that he had a lease on the premises which, during its term, provided that he might spend $5,000 on the premises in the way of repairs that would be deducted from the rent.
> "Q. Did he tell you any of the other provisions in the lease?
> "A. No, sir.

"Q. Did you ever make any demand to know any of the other provisions in the lease?

"A. No, sir; I thought I was demanding enough when I demanded notes for the balance of the account."

After testifying that the contract called for some cash payments and that notes were to be given for the balance, witness testified as follows:

"Q. Were these notes to be signed by Mr. Scott?

"A. Mr. Scott was to give his notes for the balance.

"Q. Was Mr. Key to endorse those notes?

"A. I do not know whether he was to endorse them or not. Mr. Scott's notes would have been good enough for me without any endorsement."

It clearly appears from the foregoing, we submit, that all of the appellants contracted with Key, or with Key and Scott, on their own responsibility alone, and not on the responsibility of the lease. They were told by Key of the condition in the lease as to the allowance for repairs, but none of them expected or contemplated payment from that source. In fact we think the evidence fairly shows that they all made their contracts with Key before they knew anything about the terms of the lease.

The appellee did not agree in the lease to pay the lessee or anyone else $1,000 a year, and not one of the appellants was told or expected that she would do so. The lease says, and they were so advised, that she would allow a certain credit to the tenant on account of the rent to be paid by him, upon certain conditions. At most they were only entitled to assume, that the credit to Key on account of the rent would possibly render him that much better able to pay their demands; and this is entirely consistent with the evidence which shows that they contracted solely with Key, presented their bills to him, and expected to be paid by him.

IV.

APPELLANTS' ARGUMENT ON THE FACTS.

In appellants' brief much space is devoted to an attempt to prove that Key was the special agent of appellee, authorized to make all of the improvements and repairs sued for, and to charge her with the cost thereof. There is not one item of proof in the record to sustain this contention, unless it be contained in the lease itself; and no authority is produced to sustain the claim that the lease makes him her agent for the purpose of making said repairs, except certain decisions of State courts construing the peculiar provisions of their lien laws, which are entirely unlike the statute in force in this District. We think this question is settled so far as our courts are concerned, by the decision of the Court of Appeals, in the Albaugh case, found in 14 appeals, and the other authorities hereinafter noted.

Appellants also claim that Huyck was the general agent of appellee, with authority, presumably, to make any kind of representation that would bind her property, without knowledge on her part that any such statements had been made. What may be the object of this argument it is difficult to ascertain, since there is no allegation in the bills of complaint that appellants, or any of them, contracted with Huyck, or did any of the work on his representations or promises. Nor does the evidence disclose any promise of any character made by Huyck to any of them. Some of them consulted him or his employé King after they had made their contracts, with a view of learning his opinion as to the probabilities of Key paying them for the work which they had agreed to do, and when he told them he thought Key would pay them, they went to work. Appellants attempted to prove that Huyck was the general agent by producing his employé King, who had never seen any contract between Huyck and appellee, nor had any personal knowledge on the subject. His testimony on this point was all

under objection as to competency, but even if competent, he did not prove Huyck to be the general agent of appellee.

On cross-examination witness, after stating that Huyck did not rent the Barton in his own name as agent for appellee, testified as follows (Rec., p. 78):

> "Q. So that all Mr. Huyck's authority consisted of was for the purpose of obtaining a tenant for those premises, collecting rents, and attending to the insurance on the building?
>
> "A. He represented her so far as the property was concerned, fully.
>
> "Q. What other authority did he have than on the subjects which I have just enumerated?
>
> "A. I don't think he had any other."

Appellants also insist that appellee is estopped from denying responsibility for the repairs made because Huyck "was constantly around the property while the work was proceeding, and there was never a word from him in any way to warn appellant * * *." Why should he warn them or interfere with their private contracts with the tenant? He knew that the tenant not only had the right under the law, but the duty cast upon him of making such repairs as he desired or thought necessary; and he knew that nothing had been done or said that made the landlord in any manner responsible for the cost of those repairs. But what was Huyck's knowledge as to the making of repairs? Langley was asked about it as follows (Rec., p. 55):

> "Q. You saw Mr. Huyck around the premises of the Hotel Barton during the time you were doing this work about which you have testified?
>
> "A. I have seen him there. I do not know that I have ever seen him in the building, but I have seen him passing back and forth. I used to see Mr. Huyck very often. I do not think he took that interest to go in and personally inspect the work; but he had a general lookon, and I often saw him passing back and forth."

And when asked on cross-examination about this matter, he said (Rec., p. 59):

> "I mean this: That I saw him pass back and forth on the street, his office being near, and I suppose he took a casual interest to see what was going on."

There is no claim or proof to show that Henry May, the attorney-in-fact of appellee, ever had any knowledge of the fact that improvements of any character were being made on the hotel, except such as may be inferred from Key's request to him, through Huyck, on November 22, 1900, to consent to the making of certain proposed changes, which consent he refused to give (Rec., p. 93). The doctrine of estoppel does not apply in such cases.

Phillips on Mech. Liens, par. 76.

It is further contended by appellants that the clause of the lease requiring the written consent of the lessor to the making of alterations of partitions or stairways was waived by the remission of the rent for November, 1900, and the acceptance of the December rent. It appears that Key's architect did not advise him until November 21, 1900, of the changes he thought necessary to be made in the partitions and stairways (Rec., p. 100), and Key thereupon made application to the landlord for consent to these changes, as required by the lease. In the meantime the November rent which was due and payable on November 5th, the date the lease was signed, had been remitted. At that time the landlord had the right to believe that the tenant would live up to the terms of the lease, and would attempt to make only such changes in the building as the landlord could and would consent to. At that time Key did not know what changes he might want to make. The landlord assumed that Key would eventually make changes which could be consented to, and would entitle him to the credit stipulated for in the lease, and he certainly had the legal right, acting on such

assumption, to allow a portion of the credit in advance, without waiving his right under the lease to object to changes when the time came for making such objection That neither party understood that by remitting the November rent, any covenant or condition of the lease was being waived, is abundantly shown by the subsequent conduct of the parties. So, too, it appears that the December rent became due and was paid before the appellants had practically started work on the building, their contracts having been made on November 19, 20, 21, and 23. At that time the landlord had declined to consent to certain alterations; the record does not disclose that he had any knowledge as to what was being done after his refusal of consent, and he had the right to assume that only such repairs were being made as the tenant had a right to make at his own expense and without the consent of the landlord. The lease does not disclose at what time during each year the allowance on account of changes was to be made, and the landlord was entitled, under the circumstances, to receive his rent when due, as called for by the lease, without waiving his right to object to the improvements made without his consent, or to question the value of improvements made with his consent.

In our view of this case, however, the right of appellants to recover the amount of their bills from the appellee, does not depend upon whether or not appellee has waived any of her rights under the lease. None of the appellants contracted with Key on the theory that appellee had waived any requirement of the lease. They profess to know nothing about the requirement of written consent of the landlord to making improvements. The question at issue is, did the lease constitute the lessee the agent of the lessor for the making of the improvements within the meaning of our lien law; and we believe that question has been answered in the negative by our courts, and by the State courts having similar statutes under consideration.

V.

APPELLANTS' AUTHORITIES.

Authorities have been cited by appellants, beginning on page 29 of their brief, which they claim support their contentions in this case; but an examination of the cases cited discloses the fact that all of them turn upon the construction of statutes entirely different from ours, and therefore are not controlling in the case at bar. They quote from the 20th Am. & Eng. Encl. of L. (2d ed.), p. 319, but an examination of the authority in question discloses that the quotation made by appellants is the conclusion reached after a discussion of those State statutes which provide that a lien shall attach to the property where the work was done with the knowledge or consent of the owner, or where, having knowledge that the work was being done without his consent, the owner stood by and failed to attach a written notice to the premises to the effect that he would not be responsible for the costs of the repairs. Several cases in Pennsylvania are cited, which are based upon statutes in force in certain of the counties of that State, in construing which the courts have held that they cover what are known as improvement leases, or building contracts and leases combined. One of these statutes, to wit, the act of May 1, 1861, section 1, as extended by act of February 16, 1865, authorizes a lien where repairs, alterations, or additions are made to property by a lessee or tenant, with the written consent of the owner, or reputed owner, or duly authorized agent; and in the case of Woodward *vs.* Leiby, 36 Pa. St., 437, cited by appellants, in construing the contract between the owner and the occupant of the land with reference to said statutes, the court said:

> "In one aspect this is a lease for years, * * * and in another it is a contract for the erection of a warehouse for a consideration, payable partly in money and partly out of the profits of the land. * * * We think it ought to be regarded as a building contract rather than as a lease."

And in the case of Leiby *vs.* Wilson, 40 Pa. St., 63, the court said:

> "It is the very same issue that we had before in Woodward *vs.* Leiby, and the present case raises no other issue of any importance."

In the case of Fisher *vs.* Rush, 71 Pa. St., 40, the court said:

> "The lease by the plaintiff in error to Harding was in this instance a contract by him to erect the building. * * * It is clear that Mrs. Fisher was the person in possession at the time of commencing said building, and at whose instance it was erected,"

and so within the letter as well as spirit and intention of the act of April 28, 1840, section 24.

So in Hall *vs.* Parker, 94 Pa. St., 109, the court was considering special statutes, and said:

> "Where, however, the tenant contracts with the landlord to build or to add to or repair buildings for compensation to be made by the landlord, either in money or the occupation and use of the premises, he is, in the first instance, under the general statute, and in the second, under the special one, and here properly regarded as an ordinary contractor to build or repair. He is the landlord's agent, holding possession for him, building and repairing for him, at his ultimate cost; and the building is liable to lien, as in all other cases of building or repairing by contract."

In Boteler *vs.* Espen, 99 Pa. St., 313, the court was construing the act of 1868, which permitted the filing of liens for work done by the lessee with the written consent of the landlord. The lease in that case provided that the lessee should make all necessary repairs to the premises. That he should make no alterations or improvements without the lessor's consent, &c. The court held that this provision of the lease was not a compliance with the terms of the statute, and was not the unqualified consent which was essential to

subject the building to the operation of a mechanic's lien under the act.

In the case of Barclay *vs.* Wainwright, 5 Norris (Pa.), 191, the court held that the agreement under consideration was in effect a building contract, and not a lease, but declined to lay down any general rule for the construction of such instruments. The court said:

> "It would not be easy, and might be dangerous, to lay down any general rule by which to determine, in all cases, whether an improvement lease does or does not come within the intent and spirit of the 24th section of the act of April 28, 1840, Pamph. L., 474, so as to subject the ground and building to the lien of a mechanic or material man."

In the cases of Burkitt *vs.* Harper, 79 N. Y., 273, and Otis *vs.* Dodd, 90 N. Y., 336, the courts were construing the act of 1862, which gave a lien where a building was erected upon land by permission of the owner, and the act of 1873, which gave a lien where a building was erected upon land with the consent of the owner. These two cases are cited and distinguished by the Court of Appeals in the later case of Cornell *vs.* Barney, 94 N. Y., 394, where the court was called upon to construe the lien law of 1875, which provided that, in order to maintain a lien, the work must be done or materials furnished at the instance of the owner of the building or his agent. In that case material was furnished to a lessee for construction of a building by him upon the leased premises in pursuance of a provision in his lease, by which he covenanted to erect a building on the demised premises of a certain value. The lessor covenanted to loan a specified sum as the building advanced, to be secured by a deed of trust on the lessee's interest, the buildings at the end of the last of certain renewals provided for, or sooner in case of the lessee's default, to revert to and become the property of the lessor. The court said:

> "The plaintiffs can have no lien under this section upon Barney's (owner) interest in the land, because

> he did not in any proper sense cause the building to be constructed. Within the meaning of this section the building must be constructed for and at the expense of the owner of the land, or under contract with him. Salem (tenant) caused this building to be constructed and the plaintiffs could have a lien upon his interest in the land under his lease."

The case of Van Ness *vs.* Wood, 42 Minn., 427, was based upon the peculiar provisions of section 2 of Gen. Stat. of Minnesota, chapter 90, relating to liens. It need only be said that in that case there was no lease, but a contract for a lease, which provided that the owner should give a lease after the other party to the contract had made improvements on the property to cost not less than $30,000. Under this contract the proposed tenant began the erection of improvements, and plaintiff sued for cost of work done, and the court said that, conceding, without deciding, that plaintiff would not be entitled to a lien if the proposed tenant had actually held a lease, the court was of opinion that improvements contemplated must be distinguished from those which might have been put on the property under a lease. That the contract was not an improvement lease, but had all the essential and main characteristics of a building contract by which the proposed tenant was required to remodel and improve the building for the benefit of the land.

The California statute of 1867, under which Moore *vs.* Jackson, 49 Cal., 109, was decided, provided that mechanics should have a lien for work done at the instance of the owner, or his agent, and that any person having charge of the work, either in whole or in part, should be held to be the agent of the owner for the purposes of the law. Section 2 provided that any buildings constructed, altered, or repaired with the knowledge of the owner shall be held to have been constructed, altered, or repaired at the instance of such owner, &c., unless he shall, within three days after receiving knowledge, give notice that he will not be responsible for same by posting a notice to that effect upon the building.

In the case referred to, the owner had knowledge that a prospective purchaser had taken possession of his house and was making repairs; he saw the repairs after completion, and he never gave the notice required by statute disclaiming responsibility for payment.

The Nebraska statute (Compiled Stat. Neb., chap. 54, p. 1065) provided for a lien where work is done by virtue of a contract or agreement, expressed or implied, with the owner or his agent.

In the case of Scroggins *vs.* National Company, 41 Neb., 195, cited by appellants, it appeared that the tenant made certain improvements and charged the owner with the cost thereof, and the owner paid the bill. The court held under these circumstances that the owner had accepted the improvements and his payment to the tenant was a complete ratification of the tenant's act as his agent.

It therefore appears that all of the cases cited by appellants, and hereinbefore referred to, are either based upon the construction of contracts which the courts declared to be building contracts and not leases, or else are based upon State statutes, which provide that the contractor, laborer, or material man shall have a lien where work is done with the consent of the owner, or with the written consent of the owner, or which are made by the tenant with the knowledge of the owner, who failed to repudiate responsibility therefor and give the notice required by law. It does not seem to us that any of these cases are applicable to the case at bar or in any way enlighten the court as to the proper construction to be placed upon our statute.

VI.

THE LAW GOVERNING THIS CASE.

Section 1 of chapter 45, Abert's Compilation of Laws in force at the time the appellants made their contracts with Key, provides that "every building hereinafter erected or re-

paired by the owner or his agent in the District of Columbia * * * shall be subject to a lien in favor of the contractor," &c.

Section 4 in part is as follows:

> "When the building shall be erected or repaired by a lessee or tenant for life or years, or a person having an equitable estate or interest in such building, or the land on which it stands, the lien created by this act shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owner."

The Code contains similar provisions to those above quoted, with others not found in the law of 1884, and took effect before the Linskey suit was filed.

Appellants apparently rely upon section 1 of the act above quoted as giving them the right to a lien, as they only quote that section without referring to section 4. If section 1 was the only provision of the law applicable to this case, then we submit that a proper construction of that section would require the court to hold, so far as this case is concerned, that the owner therein referred to means the lessee in possession of the premises. Key was the owner of the premises for the term named in his lease, having exclusive possession thereof, with the legal right, aside from any provision in the lease, of making all desired or necessary repairs at his own expense. Under such circumstances, it has frequently been held that a lessee for a term of years is the owner of the premises within the meaning of the lien laws, and his property on the premises, including his lease, may be sold under proceedings to enforce the mechanics' lien for materials furnished or labor supplied him, but nothing more.

Thus it was held where a lien was given upon "any lot of ground or tract of land, upon which a house has been constructed * * * by special contract with the owner, or his agent, in favor of the mechanic," that a person who had leased the same for a term of years, and erected a house on it,

is the owner within the meaning of the statute, and his term may be sold.

Alley *vs.* Lanier, 1 Coldw. (Tenn.), 540.
Phillips on Mechanics' Liens, par. 83, and cases cited.

In interpreting the word "owner," found in the statutes, the courts have held that it means the owner of any estate or interest in the building that the court may order to be sold in satisfaction of the lien.

Phillips on Mechanics' Liens, par. 65.
Benjamin *vs.* Wilson, 34 Minn., 517.

It is claimed, however, that the word "owner," in section 1 of the act of 1884, refers to and means the owner of the fee-simple, and that the appellee as owner of the fee-simple is liable in this case, because the work was done by her agent. The Barton Hotel confessedly was not repaired by the appellee as owner, and there is no sufficient evidence in the record of Key's agency to make repairs on her behalf and charge her with the cost thereof. Statements of Key or Huyck, made over objection, as to her connection with the premises and as to the provisions of the lease, are not binding on her in the absence of all proof of their authority to make such statements. Agency cannot be proved by the declarations of the agent.

> "The admissions, acts and declarations of an alleged agent, not shown to have been known to or acquiesced in by the alleged principal, are not admissible in evidence as against the alleged principal, to prove either the existence of the agency or its extent."
>
> Wharton on Law of Evidence, par. 172.
> Greenleaf on Evidence, 10 Ed., secs. 110, 111.
> Trust Co. *vs.* Robinson, 79 Fed., 420.
> Nowell *vs.* Chipman, 170 Mass., 340.

Section 1 of the act of 1884, as above construed by us, is further qualified by the provisions of section 4, above quoted,

which clearly indicate the intention of Congress to be that when the owner of the premises referred to in section 1 of the act is not the owner in fee-simple, but is a tenant for life, or years, or the owner of an equitable interest in the property, that the property shall only be subject to a lien to the extent of the interest of such tenant, lessee, or equitable owner. We think that the two sections of the law construed together make it perfectly plain that, as applied to this case, the owner of the premises was the lessee in possession thereof for a term of years, and that only his interest could be subjected to the liens of appellants.

VII.

LEASE DOES NOT MAKE LESSEE AGENT OF LESSOR.

The contention of appellants that the Barton Hotel was altered and repaired by the agent of the owner of the fee within the meaning of section 1 of the act is based upon the theory that the lease, which permitted the tenant to make changes in the construction of the building, or alterations of partitions or stairways, with the written consent of the landlord, constituted the tenant the agent of the owner for the making of such changes or alterations. We submit that the provisions of the lease do not, as a matter of fact or law, establish such agency. In construing the lease it may be well to remember that at the common law the burden of making repairs was always cast on the tenant, and the landlord was under no implied obligation to keep rented premises in repair. That rule is in force in this District.

Kaufman *vs.* Clark, 7 D. C., 1.

Taylor on Landlord and Tenant, par. 328.

> "Where the lessee is authorized by the terms of the lease to erect improvements on rented premises on his own credit, and at his own expense, which are to become the property of the lessor at the termi-

> nation of the lease, the value thereof to be paid by him in money, or to be deducted from the rent then due, this does not constitute the lessee the agent of the lessor for the erection of such improvements, nor does it impose on the lessor the duty or obligation to pay therefor."
>
> Rothe *vs.* Bellingrath, 71 Ala., 55.

The Colorado lien law, section 1 of act of 1893, page 315, Session Laws 1893, provides:

> "Mechanics, material men, contractors, subcontractors, builders, and all persons of every class * * * shall have a lien upon the property upon which they have rendered services, or bestowed labor or furnished materials * * * whether at the instance of the owner or of any other person acting by his authority, or under him as agent, contractor, or otherwise."

In Wilkins *vs.* Abell, 26 Colo., 462, Abell, a contractor, made an agreement with the lessee of a mine to do certain work therein, and upon failure of the lessee to pay therefor, Abell filed a lien against the property and brought suit to enforce the lien against Wilkins, the owner, to have the mine sold to pay the lien. On appeal the court said:

> "In the case of subcontractors, material men, and laborers, a lien is upheld because of the implied authority given by the owner to the contractor to employ such labor and procure the material necessary to carry out his contract. The lien must be founded on contract with the owner, either directly or indirectly; for it is only thus that one man can ever acquire a claim upon the property of another (Phillips, Mech. Liens, pars. 58, 65; Miller *vs.* Hollingsworth, 33 Iowa, 224; Hopkins *vs.* Hudson, 107 Ind., 191; Overton on Law of Liens, par. 538). No such relation exists between a lessor and lessee. The lessee is in no sense the agent or superintendent of the lessor, nor is he a contractor in the contemplation of the statute (Harman *vs.* Allen, 11 Ga., 45; Gould *vs.* Wise, 18 Nev., 253; Moore *vs.* Vaughn, 42 Neb., 696; Waterman *vs.* Stout, 38 Neb., 396; Coburn *vs.* Stephens, 137 Ind., 683). * * *

> "It seems clear, therefore, that an employment by a lessee does not constitute the employment contemplated by the statute; and there is nothing in the purview of the act which subjects the owner's interest in the fee to a lien for an indebtedness incurred by by the lessee."

So in a similar case in Indiana, Hopkins *vs.* Hudson, 107 Ind., 191, the court said:

> "No analogy can be maintained between the case of a contractor who is supposed to possess implied authority to bind the property of the owner to the extent of subjecting it to a lien imposed by law in favor of subcontractors, and material men, and that of a tenant or lessee who has no such authority. In the one case the relation warrants the inference of authority. In the other no authority is implied. The extent of the power or authority of the lessee is to bind such interest, and such only, as he possesses in the property. Unless an actual agency is established, the interest of the lessee alone is chargeable."
>
> See also Wilkerson *vs.* Rust, 57 Ind., 172.
> Block *vs.* Murray, 12 Mont., 545.

> "The mechanics' lien law requires that a contract for material, labor, etc., for the improvement of real property shall be made with the owner thereof, or his agent; and a tenant of real estate, because of his tenancy, is not the agent of his landlord in such a sense as to render the latter, or his real estate, liable for materials furnished the tenant and used by him in erecting improvements on such real estate."
>
> Moore *vs.* Vaughn, 42 Neb., 696.
> Waterman *vs.* Stout, 38 Neb., 396.

But it seems to us that this question of implied agency from the terms of the lease is settled in this District by the case of Albaugh *vs.* Litho-Marble Company, 14 App. D. C., 113. In that case the owner of the property leased the same to a tenant for ninety-nine years, with a covenant that the lessee or his assigns should be permitted to erect a building on

the premises at his or their own expense, which building should be surrendered to the owner, or her heirs or assigns, at the end of the term, without charge to them. The assignees of the tenant proceeded to erect a theater on the leased ground, and made a contract with the Litho-Marble Company for certain of the work to be done. A dispute having arisen as to the amount due the marble company, a lien was filed by it against said property, and its bill to enforce the lien sought to dispose of the fee simple title as well as the leasehold interest of the tenants in the property. It was alleged in the bill, as in the cases at bar, that the tenants acted as agents for the owner in making the improvements, because the lease authorized the tenant to build; but the court, in passing on this point, said:

> "The parties to the lease dealt with each other not as principal and agent, but practically as adverse parties. To hold that a lessor covenanting with a lessee for the security of his interest under the lease, payment of rent, probably, should construct a building upon the land in place of one to be demolished, would thereby and by virtue of such a covenant make the lessee his agent, and bind him personally, as well as his property, for the contracts of the lessee in the performance of the covenant, seems to us to be wholly without warrant, either in law or in reason; and we greatly question whether even the most positive legislation could impose liability upon one person for the obligations of another in such a contingency. Certainly no such liability is imposed, or sought to be imposed, by our mechanics' lien law."

The court in that case held that the decree against the owner and her interest in the property could not be sustained. We are unable to see why that case is not absolutely conclusive of this one in every respect. The sections of the Code then being construed are the same as the law now under consideration; and the facts in that case, we submit, were even stronger in favor of the lienors.

A general agency to take care of property, or an agency for other purposes, will not be sufficient to give authority to bind the owner.

Phillips Mech. Liens, par. 79.

Citation of authorities of other jurisdictions based upon the language of their own particular statutes may not throw much light on the subject, but we desire to call the court's attention to some cases which have interpreted statutes similar to the one under discussion.

The Maryland statute contains a provision similar to section 1 of the act of 1884, and then provides that "where a building shall be erected by a lessee or tenant for life, or for years, of a farm or lot of ground, or by an architect, builder, or other persons employed by such lessee or tenant, the lien shall only apply to the extent of the interest of such lessee or tenant."

In Hoffman *vs.* McColgan, 81 Md., 390, after construing the statute in line with our contention, the court, in referring to the above quoted provision, said:

> "This provision of law has been frequently before this court for construction, and its plain manifest meaning has been uniformly maintained" (citing Mills *vs.* Matthews, 7 Md., 322; Gable *vs.* The Preachers' Fund Society, 59 Md., 456; Lenderking *vs.* Rosenthal, 63 Md., 34; Beehler *vs.* Ijams, 72 Md., 195, and Phillips on Mechanics' Liens, pars. 89 and 90).

The Hoffman and McColgan case presents facts very similar to those in the case at bar, except that in addition to relieving the tenant from the payment of a portion of the rent due under the lease, in consideration of the erection of improvements by the tenant, the owner also agreed to pay to the tenant "as a bonus, and not as a loan," the sum of $500 on each house during the progress of the work. In that case also the builder was informed by the tenant as to the terms of the lease. On this point the court said:

"The appellant's (lienor) own testimony shows that he knew from Clarke (the tenant) the nature of his contract with the appellee (the owner), and it was his duty, before delivering the bricks, to have satisfied himself as to the state of Clarke's title to the lots built upon. Certainly he was not misled by any act or representation of the appellee, with whom he had no intercourse whatever."

S, a tenant of D, in possession of D's house, agreed to raise the tenement to grade at his own expense on condition that D would grant an extension of the lease, make certain cash payment, &c., S to pay a certain increased rent upon completion of the work. S contracted in writing with J to do the job. On its completion, in an action by J against D and S to enforce a mechanic's lien for an unpaid balance of the contract price, it was held that S "caused" the house to be raised within the meaning of the lien act of 1862; that J and S were the persons who "contracted" therefor, and that the only lien required by J was upon the interest of S, the lessee.

Johnson *vs.* Dewey, 36 Cal., 623.

A lessor allowed the lessee to make certain improvements on the leased premises, and agreed to contribute $1,000 towards the cost thereof, which he did. The lessee contracted with a contractor for the construction of the improvements. Held, that the contractor did not acquire a mechanic's lien on the lessor's property, Shannon's Code, par. 3531, confining lien to cases where the contractor has a special contract with the owner of the property or his agent.

Reed *vs.* Estes, 80 S. W., 1086.

VIII.

THE LIENS ARE SUBJECT TO THE CONDITIONS OF THE LEASE.

The lienors undoubtedly had the right, under the law, to subject the leasehold interest of Key to the payment of their claims, to the extent of its value; but their liens were subject

to the covenants and conditions of the lease. Where it appears that the lease became forfeited by reason of the failure of the lessee to pay rent, and the interest of the lessee was sold at the suit of other creditors, there is nothing left for the liens to attach to and they become valueless.

Under Rev. Stat. 1891., sec. 82, pars. 1 and 2, which give a lien to mechanics for buildings erected under contract "with the owner of any lot or piece of land," such lien to "extend to an estate in fee, for life, for years, or any other estate which such owner may have," a mechanic who does work on a building under contract with the lessee, whose lease is forfeitable on non-payment of rent, has no lien as against the lessor after the lease has been so forfeited, since a lien on the leasehold estate is subject to all the conditions of the lease.

Williams *vs.* Vanderbilt, 145 Ill., 238.
Electric Co. *vs.* Norris, 100 Mich., 496.

A mechanic's lien upon a leasehold estate attaches subject to all the conditions of the lease.

Gaskill *vs.* Trainer, 3 Cal., 334.

A leasehold interest is one upon which a mechanic's lien may be placed, and improvements put upon the premises adding to the value thereof create the lien. But in this case it is manifest that the leasehold interest of the Smokeless Fuel Company became worthless by the failure of the experimental gas plant. Such leasehold was dependent upon the payment of a large sum for ground rent. When the business undertaken on the premises became such a failure that essential portions of the plant were suffered to be taken away by a constable, it is manifest that the liens became worthless.

Chicago Smokeless Fuel Gas Co. *vs.* Lyman, 62 Ill. App., 538.

A lien on the leasehold is subject to all the conditions of the lease. Therefore a forfeiture of the lease for non-payment of rent destroys the lien.

Boisot on Mechanics' Liens, sec. 133.

A lien may be acquired and enforced against a tenant's interest in all cases where it can be done without an invasion of the rights of the reversioner. The lien cannot of course extend beyond the estate of the tenant, nor can it be used to the injury of the owner of the reversion.

McCarthy *vs.* Bennett, 84 Ind., 27.

If a tenant voluntarily quits the premises, or the landlord re-enters for non-payment of rent, the lessee loses the value of his improvements, notwithstanding a stipulation in the lease providing for their appraisal at the end of the term and the payment of their value by the landlord.

1 Taylor on Landlord and Tenant, 8th ed., par. 335*a*.
Lawrence *vs.* Knight, 11 Cal., 298.
Gudgell *vs.* Duvall, 4 J. J. Marsh, 229.
Smith *vs.* Brown, 5 Rich. Eq., 291.

An agreement to make repairs and alterations made with a lessee who has covenanted in the lease to make all necessary repairs and improvements at his own expense does not subject the estate of the lessor to a mechanic's lien.

Conant *vs.* Brackett, 112 Mass., 18.
Francis *vs.* Sayles, 101 Mass., 435.

Where a tenant makes improvements on the leased premises, a mechanic's lien therefor can be enforced only against the tenant's interest in the premises.

Moore *vs.* Vaughn, 42 Neb., 696.
R. R. Co. *vs.* Shivers, 125 Ga., 218.

A mechanic's lien cannot be held as against the owner of a building for repairing done under contract with the lessee merely because the owner knew of and acquiesced in the work.

Eichler *vs.* Warner, 91 N. Y. S., 793.

It is respectfully submitted that the appellants have failed to make out any case entitling them to a decree against the appellee or her property in any sum whatever, and the decree of the lower court dismissing the bills of complaint should be affirmed.

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